THE

WORKS

OF

JEREMY BENTHAM,

PUBLISHED UNDER THE SUPERINTENDENCE OF
HIS EXECUTOR,

JOHN BOWRING.

VOLUME XI.

EDINBURGH:
WILLIAM TAIT, 107, PRINCE'S STREET;
SIMPKIN, MARSHALL, & CO., LONDON.
MDCCCXLIII.

LIST OF ERRATA.

ERRATA—VOL. I.

Page	Col.	Line	
289	2	44	for *repeating* put *repealing*.
341	1	58	for *Burlamqui* put *Burlamaqui*.
428	1	39	for *patron* put *pattern*.
458	1	1	for *dignitate* put *dignitati*.
489			for § 8 put § 9.

ERRATA—VOL. II.

Page	Col.	Line	
170	2	35	for *mouth* twice put *month*.
585	1	35	for *but* put *that*.

ERRATA—VOL. III.

Page	Col.	Line	
88	2	48	for *usefulness* put *uselessness*.
409	2	last	for *ppellatives* put *appellatives*.
448 n		3	for 5 *and* 6 put 436 *and* 437.
483	2	17	for *questionably* put *questionable*.
526	2	50	for *in and* put *and in*.

ERRATA—VOL. IV.

Page	Col.	Line	
89	1	32	put the comma before instead of after *half*.
237	2	31	for *prinso* put *prison*.
242	2	4	dele the second *by*.
311	2	30-31	for *paragraphe* put *paraphe*.
365	2	34	for *latter* put *former*.
–	--	35	for *former* put *latter*.

ERRATA—VOL. V.

Line	Col.	Page	
275	1	17	for *inactive* put *enactive*.
411	2	48	for *daily* put *delay*.
428	2	46, 47	dele 2, and 3.
429	1	10	dele 69.
467	2	54	for *gouts* put *goods*.
486	1	35	for 14 put 11.

ERRATA—VOL. VI.*

Page	Col.	Line	
66 n†		3	for the second *his* put *the granter's*.
134	2	33	after *everything* insert *is*.
210 n*			for *p*. 17 put p. 205.
212	2	46	for *form* put *force*.
218	2	12	before *The* insert *Where the object belongs to the class of persons*.
231	1	last	for *trustworthy* put *untrustworthy, so it be not incredible*.
233	1	61	for *destroyed* put *not be increased*.
283	1	4	before *the* insert *of*.
290	1	12	dele *whether this word*.

* The corrections on vols. VI. and VII. are from Notes in the original edition by the Author, lately found.

LIST OF ERRATA.

Page	Col.	Line	
291	1	12	for *insecurity* put *in security.*
298	2	56	for *way* put *case.*
308	1	50 and .	for *him* put *it.*
321	2	35	before *opposite* put *the propriety of the.*
344		note	for *of difficult* put *difficult of.*
353	2	61 and 63,	for *exemptions* and *exemption*, put *exemplars* and *exemplar.*
395	2	63	after *side* put ?
404	2	63	after *to* insert *answer.*
423	2	6	for *or the* put *or say.*
431 n*		38	for *arrived* put *aimed.*
435	2	2	before *without* insert *with or.*
—	–	8	for *cases* put *ears.*
441	1	18	dele *non.*
446	2	37	for *classified* put *clarified.*
459	1	38	dele *the description of.*
464	2	37	for *justice* put *justices.*
475	1	53	for *strictly* put *shortly.*
482	2	49	for *not* put *and.*
502	2	61	for *cupboard* put *closet.*
509	2	53	for *distinctive* put *destructive.*
538 n		4	for *connexion* put *scription.*
544	2	13	for *untempted* put *untainted.*
547 n	2	55	for *yours* put *ours.*
563	2	34, 35	for *fictitious* put *factitious.*
577 n	2	44	for *sincere* put *sure.*
580	1	8	for *description* put *descriptions.*

ERRATA—VOL. VII.

Page	Col.	Line	
5 n †		12	for *held* put *styled.*
47	2	59	after *case* insert *persons.*
71	1	48	for *indecision* put *misdecision.*
113	2	35	after *those* insert *supposing them innocent.*
121	1	49	for *it* put *them.*
139	1	15	for *any other than its* put *in any other sense than that of its.*
178	2	38	after *manuscripts* insert *which in relation to it are.*
210	2	19	for *counted* put *united.*
256	2	14	for *oral* put *real.*
276	2	2	for *rain* put *none.*
286	1	39	for *pairs* put *pens.*
326	2	25	for *converse* put *curious.*

ERRATA—VOL. VIII.

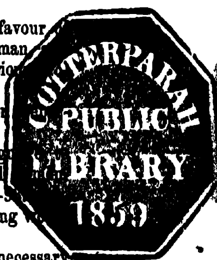
Page	Col.	Line	
45	2	21	after *to* insert *one.*
203	2	54	for *or other* put *another.*
244	2	25	for *hyrodgen* put *hydrogen.*
410	1		for Section IV. put Section VI.
417	1	30	dele the first *of.*

ERRATA—VOL. IX.

Page	Col.	Line	
285 n		last	for 9 put 19.
471	1	19	for *less* put *loss.*
497	1	3	insert a comma after the second *day.*

ERRATA—VOL. X.

Page	Col.	Line	
375	1	39	for *Sir T.* put *Sir F.*
377		Contents	for *Sir T.* put *Sir F.*
474 n	2	3	for *Charlotte* put *Caroline.*
525	1	50	for *writing* put *writings.*
559	2	27	for *comments* put *commentaries.*



H

I

K

L

M

N

P

R

T

U

V

W

X

Z

THE END.

EDINBURGH:
Printed by William Tait, Prince's Street.

INTRODUCTION TO THE STUDY

OF THE

WORKS OF JEREMY BENTHAM;

BY

JOHN HILL BURTON,
ADVOCATE,
ONE OF THE EDITORS.

VOL. I.

ADVERTISEMENT.

The writer of the following pages, believing that he possesses a more intimate knowledge than belongs to the majority of general readers, of the nature of Bentham's Works, and of the subjects discussed in them, is desirous of presenting the reader with such a cursory view of their more prominent features as may afford a general idea of their scope and character. In the performance of such a task, he will not be expected to support those opinions which coincide with his own, or to controvert those with which he may differ. In wishing his remarks, however, to be considered as of a purely expository nature, he cannot but expect that the very manner of his exposition will, in many cases, betray the partisan. He professes no claim to an impartiality which, in matters coming so closely in contact with the most important interests of the human race, would be justly ranked as an attempt to conceal thoughtlessness and indifference under the mask of candour. The subjects which will have to be mentioned are those on which almost every man has formed an opinion, and on which few can speak without exhibiting a bias. Many opinions will have to be described which, though but coldly received on their first appearance, gained gradual ground in the minds of thinking men, and are now received with so near an approach to unanimity, that it would be affectation to allude to them otherwise than as doctrines which have received the verdict of society in their favour. Even those who may dispute Bentham's first principles and general theory cannot deny to him the supremacy of the practically operating minds of his age; and in speaking of projects which have passed through the stringent ordeal of being practically adopted by those who were at first opposed to them,* the same

* Among the various practical reforms suggested by Bentham, the following are instances in which his views have been partially, or wholly adopted by the Legislature :—Reform in the Representative system. Municipal Reform in the abolition of Exclusive privileges. Mitigation of the Criminal Code. The abolition of Transportation, and the adoption of a system of Prison discipline adapted to reformation, example, and economy. Removal of defects in the Jury system. Abolition of Arrest in Mesne process. Substitution of an effectual means of appropriating and realizing a Debtor's property, to the practice of Imprisonment. Abolition of the Usury Laws. Abolition of Oaths. Abolition of Law Taxes, and Fees in Courts of Justice. Removal of the exclusionary Rules in Evidence. Repeal of the Test and Corporation Acts, the Catholic Disabilities Acts, and other laws creating religious inequalities. Abolition or reduction of the Taxes on knowledge. A uniform system of Poor Laws under central administration, with machinery for the eradication of mendicancy and idleness. A system of training Pauper children, calculated to raise them from dependent to productive members of society. Savings Banks and Friendly Societies on a uniform and secure system. Postage cheap, and without a view to revenue. Post-office Money Orders. A complete and uniform Register of Births, Marriages, and Deaths. A Register of Merchant seamen, and a Code of Laws for their protection. Population Returns, periodical, and on a uniform system, with the names, professions, &c., of individuals. The circulation of Parliamentary Papers as a means of diffusing the information contained in them. Protection to Inventions without the cumbrous machinery of the Patent Laws.

The following are among those of his proposed Reforms, which have received only a very partial, or no legislative sanction, but which have, each, a considerable and respectable class of supporters :—Free Trade. Na-

sceptical tone of exposition cannot be expected to be employed, which would be applicable to new and untried suggestions. The writer has no intention of attempting to reduce the various subjects treated of by Bentham into a scientific logical arrangement. Part of the space will be occupied with an explanation of the manner in which he treated his subjects—part with a general view of the conclusions which he arrived at. There will be no specific separation of these two departments; and the writer will have succeeded in his object, if it be admitted that he has afforded his readers a few useful, though loose hints, of the nature of the subjects which chiefly occupied Bentham's attention, and of the manner in which he treated them.

---

tional Education. The Ballot. Equal Election Districts. Local Courts. A uniform and scientific method of drawing Acts of Parliament. Public Prosecutors. A general Register of Real Property, and of Deeds and Transactions. Sanatory Regulations for the protection of the public health, under the administration of competent and responsible officers. The circulation of Laws referring to particular classes of society among the persons who are specially subject to their operation.

INTRODUCTION

TO THE

STUDY OF BENTHAM'S WORKS.

SECTION I.

BENTHAM'S STYLE AND METHOD OF THINKING.

THE general reader is so accustomed to find subjects connected with politics and legislation, treated as the mere topics of passing criticism, that he is not prepared to see them dealt with as matter of elaborate reasoning and accurate analysis. Whoever reads the Works of Bentham should, however, take the task on hand with the condition, not of bestowing on them a mere casual perusal, but of *studying* them: and it is only in some of his lighter works, or in occasional passages of his more important ones, that those who adopt the former alternative, will find either instruction or amusement. He addressed himself to those who were prepared to bestow on the sciences of Government and Legislation the same rigid intellectual labour, without which no man ever expects to become a proficient in Mathematics or Natural Philosophy. It was his ambition to lay the foundation and to build the superstructure of a new system, by which the departments of thought, which had too long been the playthings of party spirit, passion, and prejudice, should be subjected to the rules of rigid philosophical inquiry; and those who do not come to the perusal of his Works, with minds prepared to follow him through a rigid and systematic train of reasoning, cannot be said to receive him in the capacity in which he presents himself to their notice. Mistaking the method in which the author professes to teach his doctrines, cursory readers have complained of his reiteration of truisms; and they would find the same character in the axioms of Euclid, if they perused them with the same spirit. They have complained that passages are obscure, intricate, and aimless; and they would find the same defect in the Demonstrations of Geometry, if they were hurriedly to read isolated portions of them. The Author's aim was not to plead the cause of opinions unadmitted, or to render received doctrines more pleasing by ornament and illustration, but to *demonstrate*. It is only as a demonstrator, that he can fairly be appreciated. And those who would judge of the legitimacy of his conclu-

sions, must follow his chain of reasoning link by link. In performing such a task, impatient intellects will perhaps find a precision and minuteness of reasoning, which they would have been content to dispense with, and will see conclusions which they may think might have been leaped to, arrived at by systematic demonstration. But in submitting to this precision of intellectual exertion, they only subject themselves to the mental discipline, without which none of the more abstruse sciences can be mastered. Bentham found the whole field of morals and legislation crowded with fallacies which lurked behind slovenly expressions or incomplete arguments. He worked in perpetual fear of any fallacy finding a hiding-place in his own system; and he examined every word and every idea with scrupulous accuracy. It mattered not how unimportant might be the ground of deception: like a scrupulous merchant's book-keeper, who hunts out an error about a farthing, he would not allow the most trifling defect in argument to escape correction, because the principle of overlooking any defect is a dangerous one.

It must be admitted that this characteristic,—the keeping in view demonstration in preference to elucidation, is chiefly to be found in his later works. In those which he published early in life, there is more ornament and less of the character of severe logic. His mind was at all times rich in the produce of logical inquiry; but, in his earlier years, it was his practice to give the results of his reasonings, with the arguments generally and popularly stated, illustrated, and adorned by similes and examples; while in his more advanced years, he omitted no portion of the process by which he arrived at his conclusions, and indulged but slightly in rhetorical ornament. Of the habits of thinking, and of composition, which accompanied these distinct methods, some elucidation will be attempted farther on; but in the meantime it may be serviceable to give a few remarks on the peculiarities of the two very distinct styles which Bentham wrote at different periods of his life.

The characteristics of Bentham's early style were, power, simplicity, and clearness. There was no writer of his age whose style had less of mannerism; and the absence of all peculiarity in that of his earliest work—the Fragment on Government, led those who naturally sought for the author of a work so bold and original among the names known to fame, to attribute it to various great men whose respective styles were strikingly dissimilar. It was not the least pleasing feature in these early works, that while the matter was wonderfully original, there was nothing in the manner of communicating it to startle the most fastidious taste. The Author's great skill, acquired by untiring study, is exhibited in the facility with which he adapts the common language of our literature to philosophical purposes, for which it had never at any previous time been used. There is never any vagueness in the expression of the most abstruse propositions; and yet they are framed out of a nomenclature which had not been intended for the elucidation of distinctions so subtle. Indeed, it would not be possible to find in the English language a style better adapted, in every respect, to describe in clear terms that which is, of all things with which language has to deal, the least easily made clear—The operations of the mind. The reader who is acquainted with his Introduction to the Principles of Morals and Legislation, his Panopticon, his Defence of Usury, and his other works written in the 18th century, will require no confirmation of this opinion. As an illustration may be acceptable to some readers, the following is taken at random—it is from the Defence of Usury:—

The business of a money-lender, though only among Christians and in Christian times a proscribed profession, has nowhere, nor at any time, been a popular one. Those who have the resolution to sacrifice the present to the future, are natural objects of envy to those who have sacrificed the future to the present. The children who have eaten their cake, are the natural enemies of the children who have theirs. While the money is hoped for, and for a short time after it has been received, he who lends it is a friend and benefactor: by the time the money is spent, and the evil hour of reckoning is come, the benefactor is

found to have changed his nature, and to have put on the tyrant and the oppressor. It is an oppression for a man to reclaim his own money; it is none to keep it from him. Among the inconsiderate, that is, among the great mass of mankind, selfish affections conspire with the social in treasuring up all favour for the man of dissipation, and in refusing justice to the man of thrift who has supplied him. In some shape or other, that favour attends the chosen object of it through every stage of his career. But in no stage of *his* career can the man of thrift come in for any share of it. It is the general interest of those with whom a man lives, that his expense should be at least as great as his circumstances will bear; because there are few expenses which a man can launch into, but what the benefit of them is shared, in some proportion or other, by those with whom he lives. In that circle originates a standing law, forbidding every man, on pain of infamy, to confine his expenses within what is adjudged to be the measure of his means, saving always the power of exceeding that limit as much as he thinks proper; and the means assigned him by that law may be ever so much beyond his real means, but are sure never to fall short of them. So close is the combination thus formed between the idea of merit and the idea of expenditure, that a disposition to spend finds favour in the eyes even of those who know that a man's circumstances do not entitle him to the means: and an upstart, whose chief recommendation is this disposition, shall find himself to have purchased a permanent fund of respect, to the prejudice of the very persons at whose expense he has been gratifying his appetites and his pride. The lustre which the display of borrowed wealth has diffused over his character, awes men during the season of his prosperity into a submission to his insolence, and when the hand of adversity has overtaken him at last, the recollection of the height from which he has fallen, throws the veil of compassion over his injustice.

The condition of the man of thrift is the reverse. His lasting opulence procures him a share, at least, of the same envy that attends the prodigal's transient display: but the use he makes of it procures him no part of the favour which attends the prodigal. In the satisfactions he derives from that use—the pleasure of possession, and the idea of enjoying at some distant period, which may never arrive—nobody comes in for any share. In the midst of his opulence he is regarded as a kind of insolvent, who refuses to honour the bills which their rapacity would draw upon him, and who is by so much the more criminal than other insolvents, as not having the plea of inability for an excuse.

Could there be any doubt of the disfavour which attends the cause of the money-lender in his competition with the borrower, and of the disposition of the public judgment to sacrifice the interest of the former to that of the latter, the stage would afford a compendious, but a pretty conclusive proof of it. It is the business of the dramatist to study, and to conform to, the humours and passions of those on the pleasing of whom he depends for his success; it is the course which reflection must suggest to every man, and which a man would naturally fall into, though he were not to think about it. He may, and very frequently does, make magnificent pretences of giving the law to them: but woe be to him that attempts to give them any other law than what they are disposed already to receive! If he would attempt to lead them one inch, it must be with great caution, and not without suffering himself to be led by them at least a dozen. Now I question whether, among all the instances in which a borrower and a lender of money have been brought together upon the stage, from the days of Thespis to the present, there ever was one, in which the former was not recommended to favour in some shape or other—either to admiration, or to love, or to pity, or to all three;—and the other, the man of thrift, consigned to infamy. *

His later works,—those written from the year 1810 downwards, exhibit a marked change in style; whether an improvement or a deterioration, the present writer, while endeavouring to explain the nature of the alteration, will not venture to decide. The symptoms of the change will be found in his works and correspondence of the early part of the 19th century, and the Letters to Lord Grenville, on the proposed Reform in the Court of Session in Scotland,† printed in 1808, may be taken as a specimen of his style in its transition state. The prominent feature in the change arose out of a dissatisfaction with the ordinary terms of language, and their accepted arrangement, as a means of conveying, with that certainty and precision which the author aimed at, his new opinions, with their subtle subdivisions and distinctions. One of the means which he had recourse to, was the formation of a new technical nomenclature for his own purposes; this was a design which he had in view from the commencement of his career, but it was in after life that he gave his most ex-

* Defence of Usury, Works, vol. iii. p. 17.
† Works, vol. v. p. 1 *et seq.*

tensive exemplifications of it. Its nature, and the uses to which he employed it, will be noticed farther on. But, independently of neology, the style, as developed in the construction of the sentences, was novel, and avowedly so. In his minute divisions, he had perpetual occasion to compare, balance, or contrast one proposition with another; and, looking upon language as the only means through which this could be accomplished, he judged that uniformity, in the structure of sentences, would make that very structure subservient to his purposes. His arrangement was such, that the predicate, the copula, and the subject—that distributive, limitative, or exceptional terms, if there were any,—were all to be found in precisely the same parts of every sentence; and by this uniformity he was enabled, to a certain extent, to manipulate his sentences, as if they were Algebraic signs; a service to which he never could have applied the freedom and variety of locution, sanctioned by the ordinary rules of rhetoric. As an illustration of what is here attempted to be described, the following extracts, from a few notanda, explanatory of the leading principles of his opinions, may be adduced. If there be a certain degree of monotony, and even of repetition, in the sentences, it will be admitted, that they are admirably constructed for comparison with each other, and for enabling the eye to assist the mind in perceiving the principle of their connexion.

1. *June* 29, 1827.

1. Constantly actual end of action on the part of every individual at the moment of action, his greatest happiness, according to his view of it at that moment.

2.

2. Constantly proper end of action on the part of every individual at the moment of action, his real greatest happiness from that moment to the end of life. See Deontology private.

3.

3. Constantly proper end of action on the part of every individual considered as trustee for the community, of which he is considered as a member, the greatest happiness of that same community, in so far as depends upon the interest which forms the bond of union between its members.

4.

4. Constantly proper end of action on the part of an individual, having a share in the power of legislation in and for an independent community, termed a political state, the greatest happiness of the greatest number of its members.*

One of his favourite, and most serviceable arrangements, was the employment of a verbal substantive with an auxiliary, instead of a verb. "I use a substantive," he says, "where others use a verb. A verb slips through your fingers like an eel,—it is evanescent: it cannot be made the subject of predication—for example, I say to give motion instead of to move. The word motion can thus be the subject of consideration and predication: so, the subject-matters are not crowded into the same sentence,—when so crowded they are lost,—they escape the attention as if they were not there."†

Much outcry has been made about the intricacy and obscurity of Bentham's sentences. Those who bring the charge often forget that he demands severe thought as due to his subject, and that no form of phraseology would make a golden path to that which, in its very nature, requires a continuous process of abstraction. That Bentham's sentences are complex, is, however, in many instances, true; but that they are obscure or dubious, is so much the reverse of the fact, that their complexity arises, in a great measure, from the anxiety with which he has guarded them against the possibility of their meaning being mistaken. So anxious is he that the mind should not, even for a passing moment, adopt a different understanding from that which he wishes to impress on it, that he introduces into the body of his sentence all the limitations, restrictions, and exceptions which he thinks may apply to the proposition broadly stated. He limits his meaning, in the most precise manner, by a circumvallation of well-weighed words. It is difficult for the mind sometimes to trace all the intricate windings of the sentence; still more difficult to have it,

* Works, vol. x. p. 560. † Ibid. 569.

in all its proportions, clearly viewed at once; but, when this *has* been accomplished, it is at once clear that all the apparent perplexity arises from the skill with which the author has made provision that no man shall have a doubt of what he means to say. Take the following specimen from the Rationale of Evidence: the point under consideration is the extent to which a transcript may serve in evidence, in place of the original deed. Almost every sentence is complex; but when the reader has been at the trouble of abstracting his mind to the extent necessary for embracing its full meaning, he will allow that there can be no dubiety whatever as to what that meaning is—that it is clear and indubitable. The author is most careful, that, when he speaks of a possessor, it is understood that he does not mean also a proprietor; that the circumstance of his detention of the document being intentional, or unintentional, does not influence the question: that the extent of danger to which the original may be exposed by inspection, is limited, &c. &c.

When the original of a deed or other written document is so situated that the production of it cannot be effected without a more than ordinary degree of vexation, expense, and delay—lodged in some place between this and the antipodes, in the hands of some possessor, who, proprietor or not, does or does not choose to part with it or to bring it;—where such is the situation, or supposed situation, of a supposed or alleged original, at the time that an alleged transcript, or sufficient extract or abstract, is ready to be produced;—a question may arise as between the two documents, the alleged original and alleged transcript, (both certainly not being necessary, one perhaps sufficient,) which, if either of them, shall be admitted. Were both present, the admission of the transcript (unless it were for momentary provisional consultation, for the purpose or in the course of argument) would evidently be attended with some (howsoever little) danger, and with no use. A transcript, how little soever inferior in point of trustworthiness to the original, can never, so long as man is fallible, be considered as exactly upon a par with it. But the original is so circumstanced, that, rather than load the cause with the vexation, expense, and delay, attached to the production of it, it would be better to exclude it: nay, even although, to the prejudice of the side by which it should have been produced, misdecision were sure to follow. It ought therefore to stand excluded: and thereby the whole of the evidence from that source, were there no other remedy.

But the transcript,—although, in preference to or indiscriminately with the original, it ought not to be produced,—yet, rather than the evidence from that source should be altogether lost, and misdecision take place in consequence, might (if ordinarily well authenticated)—might, with much less danger than what is frequently incurred in practice, be (under the conditions above proposed) received instead of it. Nevertheless, mischief from misdecision ought at the same time (so far as is consistent with the regard due to the avoidance of preponderant collateral inconvenience in the shape of vexation, expense, and delay) to be obviated as effectually as possible. Accordingly, previously to execution, obligation (or at least liberty) ought to be in the hands of the judge, for taking from the party thus to be instated, sufficient security for the eventual reinstatement of the other party; in case that, within a time to be limited, the propriety of the opposite decision should have been made appear,—the authenticity of the transcript, or its correctness or completeness with relation to the point in question, having been disproved.*

The following passages on the subject of unpromulgated laws, are given as an illustration of the difference between Bentham's early and his later manner. The difference in the style will probably not be more remarkable than the similarity of the opinions:—

WRITTEN IN THE YEAR 1790.

Of the condition of him whose curse, I had almost said whose crime, it is to live under such laws, what is to be said? It is neither more nor less than slavery. Such it is in the very strictest language, and according to the exactest definition. Law, the only power that gives security to others, is the very thing that takes it away from him. His destiny is to live his life long with a halter about his neck; and his safety depends upon his never meeting with that man whom wantonness or malice can have induced to pull at it. Be-

WRITTEN ABOUT THE YEAR 1825.

Whatsoever good effects the portion of law in question may, in virtue of its matter, be intended or calculated to produce, the production of those effects will depend, in the instance of each individual on whom the law calls for his obedience, on the hold which it has happened to it to take upon his mind: viz. in the first place, upon the circumstance of the fact of his being apprized of the existence of the law; of the general matter of fact—viz., that on

* Works, vol. vii. p. 379.

tween the tyranny of sleeping laws, and the tyranny of lawless monarchy, there is this difference: the latter is the tyranny of one, the other is the tyranny of millions. In the one case, the slave has but one master; in the other, he has as many masters as there are individuals in the party by whom the tyranny has been set up.

Tyranny and anarchy are never far asunder. Dearly indeed must the laws pay for the mischief of which they are thus made the instruments. The weakness they are thus struck with does not confine itself to the peccant spot; it spreads over their whole frame. The tainted parts throw suspicion upon those that are yet sound. Who can say which of them the disease has gained, which of them it has spared? You open the statute-book, and look into a clause: does it belong to the sound part, or to the rotten? How can you say? by what token are you to know? A man is not safe in trusting to his own eyes. You may have the whole statute-book by heart, and all the while not know what ground you stand upon under the law. It pretends to fix your destiny: and after all, if you want to know your destiny, you must learn it, not from the law, but from the temper of the times. The temper of the times, did I say? You must know the temper of every individual in the nation; you must know, not only what it is at the present instant, but what it will be at every future one: all this you must know, before you can lay your hand upon your bosom, and say to yourself, *I am safe.* What, all this while, is the character and condition of the law? Sometimes a bugbear, at other times a snare: her threats inspire no efficient terror; her promises, no confidence. The canker-worm of uncertainty, naturally the peculiar growth and plague of the unwritten law, insinuates itself thus into the body, and preys upon the vitals of the written.

All this mischief shows as nothing in the eyes of the tyrant by whom this policy is upheld and pursued, and whose blind and malignant passions it has for its cause. His appetites receive that gratification which the times allow of: and in comparison with that, what are laws, or those for whose sake laws were made? His enemies, that is, those whom it is his delight to treat as such, those whose enemy he has thought fit to make himself, are his footstool: their insecurity is his comfort; their sufferings are his enjoyments; their abasement is his triumph.

Whence comes this pernicious and unfeeling policy? It is tyranny's last shift, among a people who begin to open their eyes in the calm which has succeeded the storms of civil war. It is her last stronghold, retained by a sort of capitulation made with good government and good sense. Common humanity would not endure such laws, were they to give signs of life: negligence, and the fear of the subject in question there exists such a thing as a portion of law: in the next place, upon the degree of correctness and completeness with which, as often as any occasion comes for acting in obedience to, or in any other way in pursuance or consequence of, such portion of law, the matter of it is present to his mind.

To the production of any bad effects, no such notoriety is, in the instance of any portion of law, in any degree necessary.

For a man to be put to death in due course of law, for non-compliance with this or that portion of law, it is not by any means, in any case necessary, that either the matter of it, or the fact of its existence, should ever have reached his mind. On the contrary, whosoever they be to whom it is matter of satisfaction that men should be put to death in due course of law (and these, more especially among English judges and other English lawyers, are many,) the greater the extent to which they can keep from each man's mind the knowledge of such portions of law to which, on pain of being put to death for disobedience, they are called upon to pay obedience, the greater the extent to which they can administer this satisfaction to their minds; and if the portions of legal matter to which this result is attached, had for their object the administering of this satisfaction to those from whose pens they issued, they could scarcely have been rendered in a more effectual degree subservient and conducive to that end, than they have been rendered by the form into which the matter of that, and all other parts of the English law have been cast.

True it is, that before any man can be put to death, or otherwise vexed for non-obedience to any portion of law, what is necessary is, that some person—nay, that divers and sundry persons, should be apprized, not only of its existence, but its contents; forasmuch as a man of ordinary prudence, such as are all those who are in the habit of taking each of them a part in an operation of this sort, will not engage in any such operation except in the persuasion, well or ill-grounded, of his being warranted in so doing, if not by the tenor of any real law, at any rate by the feigned tenor or purport of some imaginary law or rule of law, which for his justification and protection will be attended with this same effect.

But when the bearing a part in the putting of men thus to death, is of the number of those acts by the performance of which men are called upon to manifest their obedience, the production of an effect of this sort is not among those results which generally, openly, and avowedly, at least by the legislator, are held up to view in the character of the objects or ends in view ultimately aimed at: ultimately and absolutely good a result of this sort is not generally (for even here there are some exceptions) declared to be; relative, and that alone, is the term employed in giving expression to the point of view in which any such

change, suffer them to exist so long as they promise not to exist to any purpose. Sensible images govern the bulk of men. What the eye does not see, the heart does not rue. Fellow-citizens dragged in crowds, for conscience' sake, to prison, or to the gallows, though seen but for the moment, might move compassion. Silent anxiety and inward humiliation do not meet the eye, and draw little attention, though they fill up the measure of a whole life.*

appellative as *good* is spoken of as applicable to such a subject:—that A should be put to death is good, is maintained, Why? That B and C may, without being put to death, abstain from the commission of acts of the sort of that, for the performance of which A is thus ordered to be dealt with.†

But, independently of all reference to his style, there are certain peculiarities in the method of Bentham's literary labour, which must be kept in view in relation to the appearance which his later works present. He who writes a book for the purpose of influencing the public mind, by, in the first place, securing the public attention, will in general be careful to use the accepted methods of making it attractive. If the matter he has to expound should be original, and perhaps repulsive, he will take care that the form in which it is presented shall have as little as possible of the latter qualification. There are arts, in drawing the public attention to books, acquired and handed down by long experience; and these, so far as he can, he will adopt. Above all, he will see that a great deal of what is passing through his mind in the course of composition, is matter which it will do more harm than good to his work to insert in it; and he will select, prune, and arrange, till the whole has a passable appearance. Above all, he will present a work which is *ex facie* finished, and containing all that, at the beginning, the author has announced that he is to give.

It will be at once understood that Bentham did not adopt these appliances, and the cause will be perceived, when it is stated, that in later life he prepared none of his works for the press. It was his opinion, that he would be occupied more profitably for mankind in keeping his mind constantly employed in that occupation to which it was supereminently fitted, and in which it seemed to find its chief enjoyment—ratiocination. He thought that while he lived in the possession of this faculty, he should give as much of the results of it to the world, as he could accomplish by a life of constant labour, temperance, and regularity; and he left it to others to shape and adapt to use the fabric of thought which thus came out continuously from the manufactory of his brain. Laying his subject before him for the day, he thought on, and set down his thoughts in page after page of MS. To the sheets so filled, he gave titles, marginal rubrics, and other facilities for reference, and then he set them aside in his repositories, never touching or seeing them again. It was his method to divide and subdivide his subject at the outset; and after having carried this subdivision to the utmost extent which he thought necessary, he would begin his examination of one of the branches of the lowest subdivision. Having exhausted the two branches ‡ of this ultimate division, he would then go back to one of the higher branches of division, which would lead him to a subdivision in another quarter; and thus, like the anatomist who first explains to his pupils the general component parts of the human frame, and begins his dissection at one of the extremities with the design of taking them *seriatim* and working towards the heart, he took care that, so far as he went, his analysis should be completely exhaustive. It happened, however, very frequently, that his psychological dissection went no farther than the extremities of the subject he had laid out for anatomizing. This is remarkable in the Department of Logic and Metaphysics. Under the general head of Logic, a complete analysis of all the powers and operations of

* Works, vol. iv. p. 397-398.

† Works, vol. iii. p. 237.

‡ His system, according to the principle of Bifurcate division to be afterwards noticed, was always to divide by two.

the human mind had been intended; but the subject obtaining but a portion of his time in conjunction with the other vast projects which he contemplated, he was enabled only to leave behind him some fragments, of which a selection has been given under the titles Logic, Ontology, Language, and Grammar, in vol. viii. of the Works. They are specimens of the most finished workmanship, but still they are merely *fragments*. Perhaps the only extensive subject which the author completely investigated, according to the rigid method latterly adopted by him, was Evidence; and his work on this subject fills two of the closely-printed volumes in the collected edition. It is a larger work than Blackstone's Commentary on the Laws of England. But there is another work—and, perhaps, the most boldly conceived of all his projects, which Bentham lived to complete—his Constitutional Code. The plan on which he is described as proceeding in his analysis is not here applicable, for the work is synthetic, not analytic. It is neither an examination of the principles on which laws are made, nor of those on which they ought to be made, but a substantive code of laws. It may be safely pronounced, that in no language does any other such monument of the legislatorial labour of one mind exist. Independently altogether of any question as to the principles of government developed, or the sagacity of the general plan; the completeness of the fabric—the accuracy of the proportion of all parts to each other—the total absence of any sort of incongruity in the relations to one another of such a quantity of things, great and small, which have to be fitted to each other to form a homogeneous whole,—astonish the mind of the reader with the evidence that they convey of the comprehensiveness and clearness of the Author's intellect.

The above remarks, bearing chiefly on the precision with which Bentham pursued his inquiries, would give an imperfect notion of his later writings without an allusion to one signal characteristic—the bursts of fiery eloquence with which he sometimes soars from the rigid logic of his usual system. It is when his subject brings him in contact with illustrations of suffering and oppression that the man thus breaks from the philosopher. Among some pamphlets which he wrote towards the termination of the reign of George III., when he believed the remaining liberties of the country to be in imminent danger, there are many such passages as the following:—

Yes! — you pillage them: you oppress them: you leave them nothing that you can help leaving them: you grant them nothing, not even the semblance of sympathy: you scorn them: you insult them: for the transgression of scores, or dozens, or units, you punish them by millions; you trample on them, you defame them, you libel them: having, by all you can do or say, wound up to its highest pitch of tension the springs of provocation and irritation, you make out of that imputed, and where in any degree real, always exaggerated irritation, a ground, and the only ground you can make, for the assumption, that, supposing them treated with kindness — all their grievances redressed — relief substituted to oppression, they would find, in the very relief so experienced, an incitement—an incitement to insurrection, to outrage, to anarchy, to the destruction of the supposed new and never-yet-experienced blessing, together with every other which they ever possessed or fancied.

Levelling!—destruction of all property! Whence is it they are to. learn it?—what is there they can get by it?—who is there that ever taught it them?—whose interest is it—whose ever can it be—to teach it them? How many of them are there, who would, each of them, be so eager to lose his all? The all of a peasant—to the proprietor how much less is it, than the all of a prince—the all of him whose means of livelihood are in his labour, than the all of him whose means of livelihood are in his land? Who again is it, that, in your notion at least, they are at this moment so abundantly looking to for instruction? Is it not Cobbett? With all his eccentricities, his variations, and his inconsistencies, did he ever attempt to teach them any such lesson as that of equal division of property— in other words, annihilation of it? In the whole mass of the now existing and suffering multitude, think ye that one in a score, or in a hundred, not to say a thousand, could be found, so stupid, so foolish, as either of himself or from others, to fancy that, if without other means of living, he had his equal share in the whole of the land to-day, he would not, twenty to one, be starved upon it before the month were out? Oh! if the men, in whom—truly or erroneously—they behold their friends, were not better instructors as well as better friends to

them than you are, or than it is in your nature to be, long ere this would the imputation you are thus so eager to cast on them, have been as substantially grounded as it now is frivolous.*

Bentham was singularly happy in the employment of lively, humorous illustrations. He took care that in their use fancy should never be allowed to take the precedence of reason; the logical proposition was formed before the ornament was added, and the purpose of the latter was merely to make it more distinct to the eye. He made war against a system which is too common—that of using a simile not as a means of making clear and palpable the meaning of an argument, but as a substitute for the argument itself. His own similes never divert the mind from the original reasoning—they only serve to make it more vivid. Thus, the sense of hardship experienced by rapacious judicial officers, on being deprived of an illicit source of gain to which they never should have been allowed access, is compared to the sense of hardship experienced by the shark who, having bit off one of Sir Brooke Watson's legs, was compelled to leave the other in its place. "Under English law," he says, "not to speak of other systems, the sort of commodity called *justice*, is not only sold, but, being like gunpowder and spirits made of different degrees of strength, is sold at different prices, suited to the pockets of so many different classes of customers."† Talking of the English system of pleading, and its anticipated adoption in Scotland, he says —"I have no more apprehension of seeing the Scotch nation submit to defile itself with any such abomination, than I have of seeing the port of Leith opened for the importation of a pack of mad dogs, or for a cargo of cotton impregnated, *secundum artem*, with the plague."‡ Again—

If a man comes and pleads his clergy, whatever goods he had, the king has got them. This being the case, having had your clergy, you are innocent, or, what comes to the same thing, you are forgiven. All this is very true; but as to your money, the king, you hear, has got it; and when the king has got hold of a man's money, with title or without title, such is his royal nature, he cannot bear to part with it; for the king can do no man wrong, and the law is the quintessence of reason. To make all this clear, let it be observed there is a kind of electrical virtue in royal fingers, which attracts to it light substances, such as the moveables and reputed moveables of other men; there is, moreover, a certain glutinous or viscous quality, which detains them when they have got there.

Such are the grounds upon which the forfeiture of personal estate, in cases of clergyable felony, still continues to subsist.§

In relation to official men talking of appointments they have used every effort to obtain, as if they were innocent of all design in the matter, he says—"These are of the number of those gracious designs, which, till the very moment of their taking effect, are never known of. While the eyes of the right honourable person are, as usual, fixed on heaven, the grant is slipped into his pocket; and when, putting in his hand by accident, he feels it there, his astonishment is not inferior to his gratitude."||

The neology of Bentham—his construction of new words to serve his purposes—has been the subject of much attack and ridicule. This is not the place for discussing the question whether he has done any service to the language by this system of innovation, or whether the words he has coined ought or ought not to have received a more general admission into the current language of the age, than they have received; but it may be of service to the reader to explain the principles on which he proceeded in his fabrication of words, and the extent to which he has served the ends he had in view. It must be remembered that Bentham took up the position of a scientific inventor and discoverer in a new field of human knowledge—a field which, he maintained, had been left to the dominion of empirical discussion, and which thus displayed, both in the substance of all the reasoning that it produced, and in the nomenclature employed

* Works, vol. iii. p. 475-476. † Ibid., vi. 134. ‡ Ibid., v. 42.

§ Works, vol. i. p. 508. || Ibid., v. 286.

by the reasoners, the obscurity and confusion of mere popular and unscientific handling. He entered on the field of Morals and Legislation, as Linnæus did on the Animal and Vegetable kingdoms, and as Lavoisier did on the science of Chemistry—to analyze, and to introduce order and method; and, like these great men, he found that the popular nomenclature which had accompanied the vague notions of his predecessors, was insufficient in precision, and the other scientific requisites, to represent his own accurate and distinct classification. But he had difficulties to contend with which were not encountered by the pioneers of natural science. In their case, none trod the same path of investigation but such as were, like themselves, philosophers, who were prepared to view every improvement with scientific appreciation, and to take advantage of, instead of censuring, whatever tended to facilitate farther investigation, by the classification and arrangement of the knowledge already acquired. The difficulty which Bentham had to contend with was, that his subjects of inquiry were not monopolised by philosophical investigators, but related to matters of which all classes of the people—the learned and the unlearned—the scientifically precise, and the vaguely declamatory—are almost always thinking. The classification of plants is left to the undisputed control of the botanist: but every man is a classifier of offences, and duties, and legal obligations; nay, it generally happens, that, however little labour or thought he may have bestowed on the subject, every man deems his own classification the very best that can be made. Moreover, in the case of the operations of nature, the sinister interests which, being at war with the whole of Bentham's system, are inimical to every branch of it, do not operate; and whoever has sufficient skill to accomplish the end, and will undertake the labour of making a serviceable nomenclature, in any new department of Nature's works, is left the undisputed despot of his own system.

Whatever view may be taken of the abstract merits of Bentham's nomenclature, to the accomplishment of his own ends it was indispensable; and the student will not have dipped very deeply into his works before he discovers how impossible it would have been to accomplish that precision of analysis, and that uniformity in all the proposed legislational reforms, of which the instances are so many and conspicuous, without the construction of a nomenclature specially adapted to the Author's own use. A few examples will illustrate this statement. To *maximise* is a word of frequent occurrence. To *maximise official aptitude*, for instance, means—to raise that quality to the highest attainable pitch,—and the author would have required to use all these words, whenever he wished to express such an idea, if he had not coined a word for his own use. To "raise" would not have done, for it expresses no *terminus ad quem*. "Increase," "improve," and "enlarge," are subject to the same objection—they express increment, but not to the greatest practicable point. To "make perfect" would not express the meaning, which bears *in gremio* the understanding, that perfection is not attainable.—He found the rule of action, in matters where one nation was concerned with another, called the "Law of nations," a term which intimated, not the purpose or use of the law, but its mere possession, as if it were the only sort of law which nations possessed. He called it *International Law*.—He found no word in the language suited to express a universal body of Law; for the word Code, which is generally employed, has nothing in it to express universality, and is, indeed, applied to particular departments of the Law—*e. g.* the Civil Code, the Criminal Code, &c. He therefore coined the word *Pannomion* from the Greek.—The adjective "civil," as applied to law, he found possessed of various meanings, sometimes applying to all those portions of the law which are not ecclesiastical, sometimes to all those which are not penal, and sometimes to all those which are not military; and he found it necessary to discard it, and frame the distinctive term *Non-penal*.—The word "criminal" he found to be equivocally

used. A criminal lawyer might mean a lawyer versed in the penal department of the law, or a lawyer guilty of crimes; a word so tainted with dubiety was useless for the Author's purposes, and had to be discharged.—The substantive "right" he found employed, and mischievously employed, with an ambiguous meaning. Originally it signified that which the law sanctions,—my rights are those privileges of action and possession, which are fixed in my favour by the existing law. If I dispose of goods by bargain and sale, I have a right to the stipulated price, and no other man has any rival right. If I am a member of the corporation of London, I have a right to vote for a Lord Mayor of London, but not for a Chief Justice of the Common Pleas, or a Mayor of Manchester. So, if I be registered on a qualification, in terms of the Reform act, I have a right to vote for a member of Parliament, but I have no such right if I be unqualified. But, by a confusion between this substantive, and the adjective *right*, which is the opposite of *wrong*, people applied the term their *rights*, not only to those privileges of which they were in possession, but to those which they thought they *ought* to possess—to those which it was *right* they should have. Hence came declamation about "imprescriptable rights," "sacred and inalienable rights," &c.; and the effect of the confusion was, that when people demanded new privileges, they spoke of them as their rights—as privileges to which they were entitled by law, but which were denied them. The confusion ended not in mere words; for men, acting as if their legal rights were denied to them, became filled with the violence, invective, and turbulence, with which an open refusal to enforce the fixed law is apt to fill every man's breast.* It was a singular illustration of the equivoque of the word, that Blackstone should have divided his Commentaries into Rights and Wrongs, as if the substantives right and wrong were, like the adjectives of the same words, the precise opposites of each other. The word "rights" was employed in Bentham's earlier works in its precise meaning as a counterpart to fixed obligations, when he examined the objects of the civil law; but in his later works, when he had established his own distinct nomenclature, it was discarded, and the whole body of the law was scientifically divided, as we find it in the introductory Book of the Constitutional Code.†—The verb *codify*, and the substantive *codification*, have encountered much ridicule; but the subject to which they refer is as legitimate a source of laughter as the terms thus applied to it; for, except by means of such words, it would have been impossible for the Author, without much dubious circumlocution, to have urged the utility of codes of law, and to have pointed out the best means of constructing them. A code is a collective body of laws complete so far as it goes, and sanctioned, as covering the whole of its particular field, by the legislative authority. To perceive the difficulty of investigating the subject with Bentham's scientific scrutiny, without a verb corresponding to the action of creating or making a code, let the reader imagine how incomplete would be any inquiry into the operation of making laws in detail, without a verb corresponding to that operation—viz., the verb to legislate, with its substantive Legislation.

There were two distinct classes of cases, in which Bentham found subjects of discussion to which no one had ever given names, and which, therefore, had he not himself come forward as godfather to them, would have remained undenominated. In the one he scattered his nomenclature here and there, whenever, in the course of his researches, he found operations and phenomena, which, though already known to be at work, had received no denominations. In the other he applied new names to the new machinery which, in his own constructional projects of legislation, he proposed to erect. The following may be adduced

* See Works, vol. ii. p. 500 *et seq.*

† Works, vol. ix. p. 8.

as instances of the former division of his nomenclature—In all operations connected with courts of law, the quality of being accessible or inaccessible to the purpose of fulfilling the decrees of the court, is sometimes a most important quality both in men and things. The Author perceived, that though the importance of the quality was admitted by every one whose attention was attracted to it, no one had given it a name; and as he had often to speak of it himself, he found it necessary to designate it, and he called it *Forthcomingness.* He found no term characterizing the use in one litigation of evidence which had been elicited for service in another, so as to distinguish it from evidence collected solely for the litigation in which it is applied—and he called the former *Adscititious evidence.* In evidence as furnished by writings, he found that the nomenclature of the law did not distinguish those writs which were prepared with the express end of serving as evidence, from those which, not being prepared with any such view, came, incidentally, and from the course of events, to be articles of real evidence —The one he called *Preappointed written evidence*, the other *Casually written.*

The other species of Nomenclature applies to the new offices and new functions, required for bringing the Author's system of government into full operation. Such are the Functionaries: *Judiciary Registrar*, *Government Advocate*, *Eleemosynary Advocate, and Local Headman;* and the functions—*Judiciary-power controlling*, *Communication-aiding*, and *Beneficent-mediation.** Here it was absolutely necessary that the Author should choose his own names; and the only question can be, whether he is successful in his choice.

To a complete scientific Nomenclature the Author found two qualities—the one necessary, the other expedient. The former is distinctiveness, and is exemplified in the use of words, which are restricted to the meaning assigned to them, and have no other meaning attached to them which can occasion a dubiety in their use. The other qualification is, that they should have, as distinct as possible, an etymological reference to the thing they are intended to express. There are two advantages in a good etymological nomenclature—it not only assists the memory and aids the judgment by the connexion between the word and the thing signified, but it forms a medium through which the various branches of a science or art may be seen in their connexion with each other. A very remarkable illustration of the power to create such a nomenclature is afforded by the Author's Encyclopedical Table, and the accompanying treatise.† It begins with Wellbeing, or Eudæmonics, and by subdivision, embraces most of the subjects of human knowledge in collected groups, giving to each a new and apt name. Thus, Natural History and Natural Philosophy are respectively represented by Physiurgic Somatology, and Anthropurgic Somatology: the one signifying the science of bodies, in so far as operated upon in the course of nature without the intervention of man —the other the science of bodies, so far as man, by his knowledge of the convertible powers of nature, is able to operate upon them. Of the unaptness of the previous nomenclature the Author says:—

Of the two words,—the first an adjective, the other a substantive,—of which the compound appellation *Natural History* is formed, —it found, at the time of its formation, the substantive *History* already appropriated to the designation of a branch of learning, having for its subject those *states of persons and things* of all sorts, and those *events* of all sorts, that have been known or supposed to have had place in times *past:* present time either being altogether excluded, or its history being but as it were a point, in comparison with the time of history which it closes. Adding the word *natural*, say *Natural History*, the result is, that, for the import, designated by this appellative, antecedently to the establishment of that usage from which it has received an import so widely different, *we have this*, viz., the *natural* account of those *states of persons and things*, and so forth, and of those *events*, and so forth, which had place in times past.

Now, with what propriety, to any one of the above-mentioned so aptly denominated

* See the Constitutional Code, Works, vol. ix.

† Works, vol. viii. p. 63 *et seq.*

divisions, of the branch of art and science itself thus unaptly denominated,—with what propriety, to Mineralogy, to Botany, to Zoology,—can the term *Natural History*, consideration had of its original and proper import as thus developed, be applied ?

* * * * *

The branch of art and science, for the designation of which the compound appellation *Natural Philosophy* is in use, is that which has, for its *subject*, *matter* in general, considered in respect of such modifications as it has been made, or may be expected to be made, to undergo, by human *art*, under the guidance of human *science:* with the addition, perhaps, of such properties, as, by means of changes made in it by the application of that same mental instrument, have been discovered to have been already belonging to it.

Taken by itself, *Philosophy* is *the love of wisdom.* Adding the word *natural,* say *Natural Philosophy*, and, for the import designated by this appellation, antecedently to the arbitrary usage, established in this case as in that other,—we have *this*, viz. *the natural love of wisdom.**

But the Author, while showing an illustration of what may be accomplished towards a pure and apt nomenclature, admits, that in the majority of cases, the task of driving out the old empirical system of names would be, in many cases, impossible, and that the advantage would, in others, fail to compensate for the labour of the operation.† It was, therefore, only where the absence of any nomenclature, or the palpable defects of that in existence, made it necessary for him to resort to his own mint, that he coined his words on the above principles. Thus, finding no word which indicated a professional assistant in the conduct of a law-suit, and which was confined to that meaning, he constructed the term *Litigational Proxy*, for employment in the Principles of Procedure. Instead of using such terms as "Action on the case," "Assumpsit," "Qui tam," "Detinue," &c., which, though use has made their meanings determinate, are not adapted to express the Author's scientific division of Law-suits, he adopted such divisions as "Non-Penal and Penal," "Simple and Complex," "Original and Excretitious," "Plurilateral and Unilateral," "Summary and Chronical," &c.

SECTION II.

THE GREATEST-HAPPINESS PRINCIPLE AND ITS APPLICATION TO MORALS AND LEGISLATION.

It appeared to Bentham, at an early period of his life, that the Philosophy of human action was incomplete, until some general principle should be discovered, to which the actions of mankind ought all to tend. The way had been so far cleared by the Inductive system of Philosophy. Bacon laid down the grand and general law, that experiment is the means of obtaining a knowledge of what is true; but a question was left to be answered—to what end men, after having achieved the knowledge of what is true, should use that knowledge? It was clear that though experiment might teach us how to achieve that end when it had once been pointed out, it could not be the means of discovering it; for the very supposal of an end predicates something, not sought after, but predetermined. It was after much thought that he decided that the end in view ought to be the creation of the greatest possible amount of happiness to the human race. The word "utility," was the first shape in which the end presented itself; ‡ but this term left the question "what constitutes utility" an open one. The answer to—what constitutes utility? and the more abstract principle afterwards adopted, were one and the same. That is useful which, taking all times and all persons into consideration, leaves a balance of happi-

* Works, vol. viii. p. 69.

† Ibid., p. 107.

‡ See the Fragment on Government, Works, vol. i. p. 260 *et seq.*

ness; and,—the creation of the largest possible balance of happiness—became the Author's description of the right end of human actions. The manner in which he stated his axiom was at first in the words, "The greatest happiness of the greatest number," or "The greatest possible happiness of the greatest possible number;" but as there were here two conflicting elements of extent—the intensity of the happiness and the number of persons among whom it is dispersed * the respective limits of which could not be fixed, the simple expression THE GREATEST HAPPINESS was determined on.

The Author was quite aware that this principle was liable to the imperfection of all axioms. It was simply like others of its kind, the closest approach to the abstract that could be made by reasoning. Logic could tender it no support; it must itself be the base on which reasoning should rest; and unless in so far as he could obtain admission for it, it must remain unproductive of good. He

* For instance, if the question were put, whether a measure which gives twelve people happiness to the extent of 4 each, or eight people happiness to the extent of 8 each is the preferable measure, the former statement of the principle would leave it doubtful which of the two should be adopted, for, though the extent of four be but half of that of eight, twelve is a greater number than eight. By the latter principle the process is simply arithmetic. 8 times 8 being 64, and 4 times 12 only 48, the happiness to the extent of 8 each, distributed among eight people is to be preferred.

Like everything else in Bentham's Philosophy, it is by its reference to practice, and an observation of the extent to which it is acted on, that the direction of the argument thus abstractly stated, will be observed. In cases of distribution, the greatest quantity of happiness is produced where the number among which it takes place is the largest; and almost all human laws have a tendency, more or less strong, to prevent individuals from absorbing in their own persons an exorbitant proportion of the elements of happiness at the disposal of the community. Again, on arithmetical principles, property in the ordinary case removed from one person and given to another, adds a smaller element of happiness to the person who receives it, than that which the person deprived of it loses; hence the laws for the protection of property and vested rights. But the following quotation from a Pupil of Bentham, equally clear in his explanations and happy in his illustrations, will make the matter more distinct: "The latest improvement, therefore, of the philosopher whose long life has been dedicated to the diffusion of the principle,—and of which the present Article has to boast of being the announcement and the organ,—is to dismiss the superfluous 'greatest number,' and declare that the just object of politics and morals, is simply 'THE GREATEST HAPPINESS.' In this manner the magnificent proposition emerges clearly, and disentangled from its accessory. And the accessory proposition is, that the greatest aggregate of happiness must always include the happiness of the greatest number. For the greatest number must always be composed of those who individually possess a comparatively small portion of the good things of life; and if anything is taken from one of these to give to the others, it is plain that what he loses in happiness, is greater than what the others gain. It is the mathematical assertion, that a quantity x is greater in comparison of a small quantity it is taken from, than of a large one it is added to. It is the avowal that half-a-crown is of more consequence to the porter who loses it, than to the Duke of Bedford who should chance to find it;—that a chief portion of the baseness of the rich man who seized the poor's ewe lamb, consisted in taking what caused so much greater pain to the sufferer, than happiness to the receiver."—*Colonel Thompson's Works*, vol. i. p. 136.

In the Deontology there is the following statement on the subject of the Author's abbreviation of his axiom:—

"In the later years of Mr Bentham's life the phrase 'Greatest happiness of the greatest number' appeared, on a closer scrutiny, to be wanting in that clearness and correctness which had originally recommended it to his notice and adoption. And these are the reasons for his change of opinion, given in his own words:—

"'Be the community in question what it may, divide it into two unequal parts; call one of them the majority, the other the minority; lay out of the account the feelings of the minority; include in the account no feelings but those of the majority,—you will find, that to the aggregate stock of the happiness of the community, loss, not profit, is the result of the operation. Of this proposition the truth will be the more palpable, the greater the ratio of the number of the minority to that of the majority; in other words, the less the difference between the two unequal parts; and suppose the undivided parts equal, the quantity of the error will then be at its maximum.

"'Number of the majority suppose 2001, number of the minority, 2000. Suppose, in the first place, the stock of happiness in such sort divided, that by every one of the 4001 an equal portion of happiness shall be possessed. Take now from every one of the 2000 his share of happiness, and divide it any how

says, in the Introduction to the Constitutional Code.

> When I say, the greatest happiness of the whole community ought to be the end or object of pursuit, in every branch of the law —of the political rule of action, and of the constitutional branch in particular, what is it that I express?—this and no more, namely, that it is my wish, my desire, to see it taken for such, by those who, in the community in question, are actually in possession of the powers of government; taken for such, on the occasion of every arrangement made by them in the exercise of such their powers, so that their endeavours shall be, to render such their cause of action contributory to the obtainment of that same end. Such then is the state of that faculty in me which is termed the will; such is the state of those particular acts or modifications of that faculty, which are termed wishes or desires, and which have their immediate efficient causes in corresponding feelings, in corresponding pleasures and pains, such as, on the occasion in question, the imagination brings to view.
>
> In making this assertion, I make a statement relative to a matter of fact, namely that which, at the time in question, is passing in the interior of my own mind;—how far this statement is correct, is a matter on which it belongs to the reader, if it be worth his while, to form his judgment.*

But it was not to the announcement of his first principle that Bentham trusted for its adoption, but to the influence it would have on the minds of his readers when they studied the forms in which he brought it out in detail. And this brings us to examine the extent to which the author lays claim to the merit of originality. It was not the principle itself, that constituted his discovery, but his rigid adherence to it in all his expositions—his never losing sight of it, in what he did himself or called upon others to do. He did not say that the world had hitherto been ignorant of such a principle; he found the theory of utility to a certain extent promulgated by Hume, and references to the "greatest happiness" in the works of Beccaria and of Priestley; while something like the Utilitarian Principle is announced at the commencement of the Nicomachean Ethics. He found indeed that it was at the root of all systems of religion and morality; that all codes of law were more or less founded upon it; and that it was, in all places and at all times,

---

among the 2001: instead of augmentation, vast is the diminution you will find to be the result. The feelings of the minority being, by the supposition, laid entirely out of the account, (for such, in its enlarged form, is the import of the proposition,) the vacuum thus left may, instead of remaining a vacuum, be filled with unhappiness, positive suffering, in magnitude, intensity, and duration taken together, the greatest which it is in the power of human nature to endure.

"'Take from your 2000, and give to your 2001 all the happiness you find your 2000 in possession of: insert, in the room of the happiness you have taken out, unhappiness in as large a quantity as the receptacle will contain: to the aggregate amount of the happiness possessed by the 4001 taken together, will the result be net profit? on the contrary, the whole profit will have given place to loss. How so? because so it is, that such is the nature of the receptacle, the quantity of unhappiness it is capable of containing, during any given portion of time, is greater than the quantity of happiness.

"'At the outset, place your 4001 in a state of perfect equality, in respect of the means, or say, instruments of happiness, and in particular, power and opulence: every one of them in a state of equal liberty: every one independent of every other: every one of them possessing an equal portion of money and money's worth: in this state it is that you find them. Taking in hand now your 2000, reduce them to a state of slavery, and, no matter in what proportions of the slaves thus constituted, divide the whole number with such, their property, among your 2001; the operation performed, of the happiness of what number will an augmentation be the result? The question answers itself.

"'Were it otherwise, note now the practical application that would be to be made of it in the British Isles. In Great Britain, take the whole body of the Roman Catholics, make slaves of them, and divide them in any proportion, them and their progeny, among the whole body of the Protestants. In Ireland, take the whole body of the Protestants, and divide them, in like manner, among the whole body of the Roman Catholics.'"—*Deontology*, vol. i. p. 328-330.

In connexion with this, the first reference made to the Deontology, it may be well to state the reason why this work was not published in the collected edition of Bentham's works. It was collected and published by Dr Bowring, so lately as the year 1834, in two volumes; and as the impression is not nearly exhausted, it was supposed that a reprint in the collected edition would be a waste of funds, which would be better employed in the publication of works from the author's MSS.

* Works, vol. ix. p 4.

an unseen and unacknowledged guide to human action. But he was the first to bring forth this guide, to prove to the world that it should be followed implicitly, and to show that hitherto, from not keeping their guide in view, men had often wandered from the right path. "The good of the community," "the interests of the public," "the welfare of mankind," all expressions to be found in the mouths of those who talk of the proper ends of action, were so many ackowledgments of the Greatest-happiness Principle, and vague attempts to embody it. There is here an apt parallel with the philosophy of Bacon. Long before his day experiments were made, and thinkers, even in their emptiest theories, in some shape or other looked to experience. Fact was then, as now, the source of knowledge; but for want of an acquaintance with what their source of knowledge really was, men wandered about among vague theories, and Bacon was the first to discover, that wherever experience and the induction from it are lost sight of, there is no check to the errors of thought. In like manner does Bentham show, that, when the greatest happiness of mankind is lost sight of, in the pursuit of more immediate ends, there is no check to the aberration of human action.

There is, perhaps, no better illustration of the operation of the utilitarian principle in minds which are ignorant of, or do not acknowledge its existence, than in the appreciation which Bentham's works have met with by the majority of his readers. His general principle has received few adherents, in comparison with the number who have adopted his detailed applications of it. There is no project of change, or plan of legislative reform, in which he has not kept the greatest-happiness principle in his eye as the end to which it has been adapted; yet there are many who accede to his practical measures, while they repudiate his general principle. Thus, that jurymen should not make oath, each to vote according to his conscience, and then be coerced till they are unanimous; that there ought to be a general register of real property, in which all sales, burdens, and pledges may be entered; that the price paid for the use of money ought no more to be fixed by law than the consideration given for any other contract—are all opinions admitted by a large portion of practical men, who, when their attention is directed to the end to which all these proposals are but means, intimate a distaste of vague theory, and turn their backs upon it. There can be no doubt, then, that had Bentham contented himself with an exposition of his leading principle, instead of giving the world, on so wide a scale, the details of its operation, he would have had far fewer followers than he has: and that, indeed, it has generally been through the influence of his practical adaptation of it, that he has brought his pupils to the adoption of his central principle.

It is a circumstance worthy of remark, that the philosophy of Bentham met with an opponent even in the extent to which its leading principle was practically admitted. The quantity of utilitarianism that was in mankind, had rooted certain opinions so firmly in their breasts, that they took a suspicion of that sceptical philosophy which took them up and examined them, though the examination ended in approval. People lost patience with the system, when they heard its author ask whether theft and falsehood were hurtful to mankind, before he condemned such acts. When it was said that murder, if beneficial to society, would be a virtue instead of a vice, it was indignantly maintained, that under no presumable circumstances could it be anything but what it is—the most atrocious of crimes. That fact was, indeed, one of the most broad and clear cases in which the utilitarianism of the world had made up its mind from the beginning. Almost, in all ages and in all nations, men had leaped at the conclusion without a perceptible interval of ratiocination. It was a startling thing to see so long decided a question called up for trial, and to hear the evidence against it investigated and weighed, before judgment was pronounced, as if there were really room for any dubiety. The feeling was somewhat akin to the popular

cry which, in the case of a public and notorious criminal, tries to bear down the calm deliberation of the judicial tribunal, and is scarcely content when the proceedings end in punishment, because the very weighing of evidence, in such a case, seems to be a trifling with truth which frightens people into the belief that it is possible justice may be got the better of. Viewing them with reference to the question of their popularity, the prudence of some of these illustrations of the utilitarian principle might be questioned. Putting the case that murder would be justifiable if it were for the benefit of the community, was like putting the case, that if that which was bad were good, then it would not be bad. The conclusion was so clearly leaped to, both by the public and the philosopher, that the mere supposititious questioning of it by the latter, looked like a play on words. Yet, all who have followed tissues of abstract reasoning, know how very necessary it is to have clear views of the simpler propositions of a series, as a preparation for the proof of the more complex. That the opposite sides and angles of a parallelogram are equal to each other, seems too simple a statement to require any proof: but, if it were not demonstrated, a link would be lost in the chain of reasoning which shows that the square of the hypothenuse of a right-angled triangle is equal to the squares of the other two sides. Though men admitted the evil effect of murder, they had not followed the utilitarian principle so closely as to see much mischief in condemning a man to death according to law, when a smaller punishment is sufficient: and while theft encountered condemnation almost universal, the number of those who carried out the principle to the condemnation of the wilful accumulation of debts, which the debtor knows he has no chance of paying, was small. In both cases, however, the proof of the simpler proposition was an introductory step to the proof of the more complex.

Having established the pursuit of the greatest happiness as the leading object which all men should hold in view, the next step was, to find what principles there were in human action to be made conducive to this end. In examining the real state of the actions and impulses of mankind, and going back from particulars to the most general principle of action, the philosopher came to the conclusion, that every human being, in every action which he performs, follows his own pleasure. He had to deal with a multitude of prejudices, in his use of this term, but he would perhaps have hardly propitiated his opponents if he had chosen a new one. The very universality of its individual action was against it as a general term; for every man felt so strongly that what was pleasure to his neighbour was not pleasure to himself, that he revolted against the application of the same word to qualify motives which appeared so distinct. Among a large class of persons, the expression, "the pursuit of pleasure," had inherited the bad reputation which has popularly attended the doctrines of Epicurus. It was connected in some way with sensuality and mere corporeal enjoyment, and stood in opposition to those objects and pursuits which the better part of mankind hold in esteem. In the popular discussions on this subject, there is generally a want of observance of the distinction between pleasure as attained, or, in one word, happiness, and pleasure as an object sought after. The latter is an unknown quantity—the former presents us with the arithmetical results of the experienced pains deducted from the experienced pleasures. Many a man makes himself unhappy; but no man pursues unhappiness, though one may be very unsuccessful in his pursuit of happiness. One man is seen industrious, prosperous, surrounded by a well-educated moral family; his contemporary and class-fellow has been bringing himself gradually to the grave by profligacy—has impoverished himself, and has lost the respect of his fellow-men by the desperate alternatives to which misery has driven him. It is not easy to believe that both these men are in their actions directed by the same motive—the pursuit of pleasure. One man is seen cautiously laying up for himself a depository of future enjoyment,

at the price of present privation; another, yielding to all immediate influences, scatters at once the whole of the material of enjoyment which nature has put at his disposal; while a third is systematically depriving himself of the ordinary appurtenances of human gratification, that he may dedicate them to heaven, or to the relief of those portions of his race who have been less gifted than himself. It requires that one should have a very abstract and unconventional notion of the term happiness, to believe that it is the moving force in each one of these cases.

Perhaps it may serve the purpose of farther explaining the sense in which Bentham used the terms happiness and pleasure, to compare them with those words which more nearly approach to them. In the first place, it is necessary to keep in view an essential difference in the acceptation of the two words. Happiness is applied to the state in which the mind is placed when enjoying a continuity of pleasure: pleasure is applied to each of the individual sensations which, when aggregated, produce happiness. It is generally, therefore, more convenient to use the word, pleasure, when the immediate results of actions are talked of, and the word, happiness, when ultimate and permanent effects are the subject. In popular language, the distinction is sometimes drawn to the extent of contrast, and a man is said to pursue pleasure to the destruction of his happiness. When speaking, therefore, as we are now doing, of the immediate impulse of acts, it is convenient to use the word, pleasure: when we come to the discussion of acts in their general results, the term, happiness, will be more applicable.

The term nearest to being synonymous with pleasure, is *volition:* what it pleases a man to do, is simply what he *wills* to do. By considering it for a moment in the light of mere volition, we separate it from the notion of actual enjoyment—that popular acceptation which is most likely to lead us astray. What a man wills to do, or what he pleases to do, may be far from giving him enjoyment; yet, shall we say that in doing it, he is not following his own pleasure? A man drinks himself into a state of intoxication: here, whatever may be the ultimate balance of happiness, people can at least imagine present enjoyment, and will admit that the individual is pursuing what he calls his pleasure. A native of Japan, when he is offended, stabs himself to prove the intensity of his feelings. It is difficult to see enjoyment in this case, or what is popularly called pleasure; yet the man obeyed his impulses—he has followed the dictate of his will—he has done that which it pleased him to do, or that which, as the balance appeared to him at the moment, was, in the question between stabbing and not stabbing, the alternative which gave him the more pleasure.

Those hasty acts, the result of sudden impulse, which one afterwards repents of having done because they militate against ultimate happiness, are the operations which people can with least facility ally to the pursuit of pleasure. They cannot imagine a balance struck in the mind in favour of pleasure, in cases which, by their results, and the feeling which the actor afterwards expresses regarding them, have evidently been so much the result of want of consideration. But, unless it be denied altogether that will has any influence in such cases, it cannot be denied, that what the man wills to do is that which gives him, at the moment, greater pleasure than abstaining from it. A man, in a fit of fury, stabs his best friend. The deed followed the impulse as quick as lightning; but was not the will brought into play? if it was not, ask legislators why they make laws for punishing those who give way to their passions—ask them if the fear of punishment has not often been the actual sanction which restrained the assassin's blow, even when the deed he would have committed is one which he would afterwards have repented of? The rapidity of the operation of the will—of the action of choice—is exemplified in every day life. It transcends, in its quickness, the power of self-discernment; and thus, working undetected, its existence is forgotten. A rapid penman,

quickly writing a letter to his friend, has his volition exercised on the choice of subjects, on the manner in which he is to treat them, on the words he is to use, and on the letters which he is consecutively to set down as the method of spelling these words. On the choice of subjects, and the manner of treating them, the operation of the will may, perhaps, be distinctly perceptible. It is not so distinctly traceable in the choice of words; and in the collocation of letters, succeeding each other at the rate of several hundreds in a minute, it will be quite imperceptible. The acts which are called rash—those which are the effects of sudden volition, are notorious for their malign influence on happiness. The imperfection generally attributable to hasty operations is perceptible in them. By too rapidly making up his mind on the question what is for his pleasure, the hasty man makes a wrong decision, and does that which, in the end, brings him a heavy balance of misery. Sudden acts may be fortunate, but they are not to be calculated upon as the most conducive to happiness, and the suppression of the habit of doing them will be found to be one of the ends of morality. A gambler may make himself rich by a lucky turn of the dice; but the best chance of permanent opulence is in favour of the man who practises a rigid system of industry, honesty, and self-restraint.

The terms, *choice* and *preference*, are useful in explaining the meaning of the word *pleasure*, as used by Bentham, though they are not so completely equivalent as *will*, being only employable where more than one thing is presented to the will, each with its own inducements. Between two courses, which a man has before him, he adopts, from pique or disgust, that which is foolish, wicked, detrimental to his own happiness, and he repents of it afterwards; still, at the moment, it was not less the object of his choice, his preference, his will, his pleasure.

It is in the cases where the instruments of palpable enjoyment are given up by one human being for the sake of the happiness of others, that its common popular acceptation renders the use of the word pleasure in its philosophical sense least commodious. He who sacrifices self for the good of others will be said to yield to the dictates of duty, of generosity, of humanity, of benevolence, of patriotism, as the case may be; but generosity revolts against attributing to him the selfish motive of the pursuit of pleasure. There is no harm—indeed there is much good—in the terms of eulogy which are applied to the motives of such actions. Bentham was not less conscious of their excellence than other moralists; but in looking at their direct and immediate motive, he found it the same one ruling principle—the pursuit of pleasure—the doing that which it pleases a man to do—the doing that which volition suggests. The misunderstanding of his opinions arose from the defect already stated—the inability of men to see sources of pleasure to others, in things which were not sources of pleasure to themselves. The sources of pleasure, both corporeal and mental, are almost innumerable; and he made them the subject of a most laborious and minute classification, under the title of "A Table of the Springs of Action." *

It is probable that this list may not be quite complete; and from the nature of such a task, if the accomplishment of a completely exhaustive list were demanded as a condition of the admission of the Utilitarian doctrines, the condition would probably not be fulfilled. It is the less difficult process, and is certainly not an unfair one, to ask the objector to point out any other motive but his own pleasure as actuating any man when he does that which he chooses to do. When Howard found himself possessed of an unappropriated sum of money, the first use for it that suggested itself was a pleasure trip on the continent; but on second thoughts he devoted it to the accomplishment of his benevolent schemes. In popular language, he was said in this instance to have made a sacrifice of his pleasure, or of his enjoyment; and in the case of an ordinary man, had Howard possessed over him the power of appro-

* Works, vol. i. p. 195 *et seq.*

priating to the improvement of prison discipline, the money which the owner of it had intended to spend on travelling, and had he so exercised his power, that owner would probably feel that Howard had deprived him of a pleasure. But the source of enjoyment and the will to choose it were fitted to each other, and placed in one mind; and who shall say that the choice he adopted was not that which gave Howard pleasure? Of a kindred spirit were the whole of the events of Bentham's life: they were a rejection of the more gross and tangible objects of human enjoyment: a recourse to elements of pleasure and satisfaction, for which vulgar and truly selfish minds have no appreciation. Seclusion, temperance, and hard labour were preferred, as the outward and visible signs of enjoyment, to popularity, indulgence, or luxurious ease; and the inward source of satisfaction was the consciousness of doing permanent good to the human race. Of his capacity for appreciating a character like his own, let his opinion of Howard stand as an illustration. "My venerable friend," he says, "was much better employed than in arranging words and sentences. Instead of doing what so many could do if they would, what he did for the service of mankind was what scarce any man could have done, and no man would do but himself. In the scale of moral desert, the labours of the legislator and the writer are as far below his, as Earth is below Heaven. His was the truly Christian choice: the lot in which is to be found the least of that which selfish nature covets, and the most of what it shrinks from. His kingdom was of a better world! He died a martyr after living an apostle."*

It will not increase our appreciation of such men to endeavour to prove that self-gratification was not their rule of action, and that *their* minds were not better suited to derive pleasure from such acts, than those of the more ignoble section of mankind whose elements of enjoyment lie on the surface of the earth they tread. As hopeful a task would it be to prove that the father has no satisfaction in denying himself the luxuries of life that he may increase his son's fortune, or that a wife cannot in reality suffer pain from seeing her husband pursuing a career of vice, if she be assured of a sufficiency of food and clothing to herself so long as she lives. The self-sacrifices made in domestic life are the cause of wonder to those who, not having like ties, have not the same sources of enjoyment: but it is useless to question, that between the doing and the not doing these acts of self-devotion, the balance of pleasure is felt to be on the side of doing them. There is almost an *experimentum crucis* in some cases where mischief is done by yielding to the pleasures of self-sacrifice. Children spoilt by an over-indulgence, purchased by privation on the part of their parents, are a frequent illustration. To avoid the pain of sympathy, a charitable person parts with money to give it to a mendicant, suspecting probably that he is an impostor and will make a bad use of it, or knowing that indiscriminate almsgiving has a deleterious and degenerating influence on society. Thus, too, will a jury allow a dangerous malefactor to escape and continue his ravages among the community, of which they form a part, because they have not firmness enough to do their duty at the expense of what is called their humanity.

Having found the psychological fact, that each man in all his actions pursues his own pleasure, and laid down the rule that the right end of action is the increase of the sum-total of the pleasure or happiness of mankind, the next question came to be—how the pursuit could be brought to bear upon the end? and he decided that, as a general rule, the happiness of the community would have the greatest chance of enlargement, by each individual member doing the utmost to increase his own. The conclusion, that the pursuit of pleasure should thus be deliberately set down as the proper end of life—the great duty of man—seemed startling to those whose notions of felicity were drawn from its most palpable, but least potent department, sensual gratification. But here again, as in the other departments of his

* Works, vol. iv. p. 121.

system, he appealed to the conduct of all men—to the views of all moralists—as illustrations that he was founding no new system of morality, but merely clearing up that which had, with more or less of deviation, been acted upon and taught in all ages. The first great point to be kept in view is, to distinguish between the pursuit of immediate pleasure, and the doing that which, probably at an expenditure of present pain, will have the effect of securing a balance of pleasure when the whole transactions of a life are wound up. People call the former the pursuit of pleasure—the latter they call the practice of morality. The gambler, the spendthrift, the drunkard, adopt the former course. Heedless of consequences, they snatch at present enjoyment; but before the end of their days the balance of pleasure has turned fearfully against them. The upright, industrious, abstemious man, has braced himself to resist these allurements. *He* has struck the balance accurately at the beginning, and at each passing moment of temptation he keeps it steadily in view. When the opportunities of fleeting enjoyment start up before him, he says, "No; I will pay dearly for it hereafter:" it will conduce to his pleasure afterwards that he has avoided it; and, reflexly, to avoid it is pleasure to him at the moment. When his days are ended, the book of life shows a balance of pleasure—an increase to the stock of the happiness of society, to which he has been an ornament and a benefactor by the acts which have conferred felicity on himself. Moralists and divines may disguise it as they will, but the balance of happiness is always the reward which they hold out for good actions. Be temperate—you will secure health and respect. Make your expenditure meet your income—you will avoid shame and embarrassment. Be liberal—you will have the good-will of mankind, their praise, and their kind offices. When the teacher looks beyond the world and opens up motives on which it is not necessary here to dwell, (for Bentham did not discuss religion in itself, but merely spoke of it as one of the influencing engines of society,) the appeal is still the same, and happiness in a future state is held out as the reward of virtue here.

If people did not follow their own pleasure, it might be a puzzling question—what morality ought to teach them? but since so it is, that every action they do is done in the pursuit of their own pleasure, the moralist's task is simplified. He teaches them how to avoid mistakes and miscalculations. He shows them how they are to obtain in its greatest quantity that which they are in search of.

It will scarcely be denied that every man acts with a view to his own interest—not a correct view—because that would obtain for him the greatest possible portion of felicity; and if every man, acting correctly for his own interest, obtained the maximum of obtainable happiness, mankind would reach the millennium of accessible bliss; and the end of morality—the general happiness—be accomplished. To prove that the immoral action is a miscalculation of self-interest—to show how erroneous an estimate the vicious man makes of pains and pleasures, is the purpose of the intelligent moralist. Unless he can do this he does nothing:—for, as has been stated above, for a man not to pursue what he deems likely to produce to him the greatest sum of enjoyment, is in the very nature of things impossible.*

In having discovered that it is a search after the greatest attainable amount of happiness, the rule of morality is far from being developed. The difficult problem, What line of conduct will be most conducive to happiness? has to be worked out. The Author, however, believed that he had done much to facilitate this operation by laying before people the ultimate, in place of the secondary objects of morality. He admitted that all the world—both the moral and the immoral part of it—were searching for the same desideratum, but he maintained that they would be more likely to find it, if they did not forget the object of their search by having their attention distracted by the various matters they encountered on their way. He found, that in the search two distinct classes of mistakes were made. Some acted hastily, following the dictates of present enjoyment without weighing the consequences; these were the immoral men. Others, after a laborious investigation,

* Deontology, vol. i. p. 12-13.

divulged schemes, which being acted on, left a balance of pain greater than the pleasure; these were the propounders of false moral doctrines. The object of morality and moral discussions is to show the former the folly of their ways, and to assist the latter in their attempts to discover the right path.

It would be a very palpable mistake to presume that it was the Author's meaning that immoral practices always bring their punishment with them in this world. The problem he works out is one of chances; not of direct cause and effect. He maintains only the possibility of discovering a moral rule, the pursuit of which will give the individual the best chance of leading a happy life. The principle has been thus propounded by an eloquent disciple—

It may not be accordant with experience that in every individual case the man who lives in the breach of moral rules shall, in exteriors at least, be less happy than some other; —any more than it is accordant with experience that every man of eighty will die before every man of twenty-five. On the contrary it may be allowed to be certain, that in some instances the contrary will happen. But what is urged is, that in the same way as it is proveable by experience that a man would be a simpleton, who with all the chances before him, should choose an annuity on the life of an average man of eighty in preference to one of twenty-five,—so it is proveable that a man commits an error and a folly, who, with all the chances to encounter, chooses the quantity of happiness which shall be consequent on a course of immorality, in preference to the quantity he might have obtained by another course. The way in which each of these propositions must be established, is by individual attention to the evidence, that though now and then a man of eighty sees the funeral of a man of twenty-five, or a man of immoral conduct is (in outward appearance at least) more fortunate and happy than some one of opposite character, this does not destroy the general inference that nine times out of ten the event is of a contrary description, and that the man is a blockhead who makes his election the wrong way. If indeed anybody says he sees reason to believe, that men of eighty are on the whole better lives than those of twenty-five, or that immoral men do upon the whole lead happier lives than moral ones, he is at perfect liberty to support his own opinion. All that is insisted on is, that there are reasons sufficient to induce the greatest part of mankind to come to a contrary conclusion. *

It is one of the evils of the imperfection of language as an accurate vehicle of thought, that the full meaning of what is involved in Bentham's views regarding the pursuit of happiness cannot be comprehended by any species of simple exposition: the student will know them best by examining them, inductively as it were, in the various works in which they are practically applied. Among the elements of the greatest-happiness principle, or of the utilitarian principle, he will find characteristics very different from that pursuit of sensual pleasure which popular prejudice attributes to the one, or that hard limitation to what are called the immediately useful and rejection of the ornamental objects of life, attributed to the other. There was no one more fully endowed with the feeling, that everything which lifts the soul of man above the clod he treads, and purifies its elements of enjoyment, tends to the fulfilment of that end which he had set before himself as the right one. The progress of a system of intellectual instruction, the most refined and elevated in its nature which the position of the individual could admit of, was one of his favourite schemes—one towards the practical adoption of which he laboured with a zeal worthy of better success. The gradual removal of the pupil's mind from contact with those objects and practices in which man shows the greatest amount of his animal, and the least of his intellectual nature, was the peculiar moral benefit he anticipated for his system. He was a zealous admirer of what may be called intellectual discipline. He conceived that the minds of youth, in almost all grades, and under all systems of education, were allowed too much relaxation from the bracing influence of severe thought. If it had been in his power, he would have made every man a thinker; he would have taught all men to meditate on the ends of their actions; to check their propensity towards immediate enjoyment, to govern their passions, and to look into the future.† It is a common error

* Colonel Thompson's Works, vol. i. p. 231-232.

† See the plan of a Chrestomathic System of Education, in the Works, vol. viii. p. 1 *et seq.* See also the Rationale of Reward, in vol. ii. p. 192 *et seq.:* where the different beneficial

to proclaim Bentham an opponent of the Fine Arts. The charge was artfully founded on his protest against taxing the poor for national institutions accessible only to the rich:* he was friendly to the devotion of such national funds as were not required for purposes more urgent, to the support of institutions for improving the taste of the people. He was in his own person an accomplished musician, and passionately attached to the pursuit. Towards poetry and painting the bent of his mind did not lead him; but, while he felt that his own intellectual exertions were to be in a different sphere, he denied not the respect due to these arts in the persons of their more eminent professors; and he saw in them great sources of intellectual enjoyment to those whose tastes and habits led them in the direction of such pursuits.†

Those petty sacrifices of selfish inclination, for the pleasure of others, which constitute the rules of good-breeding, politeness, and courtesy, formed part of his system of morality. These are not important acts, taken individually; but collectively they are the materials of which much of the happiness of social man is created.‡ He was not deaf to the greater calls for admiration made by that species of disinterestedness, which makes large sacrifices of what is called personal enjoyment, for the good of others. He looked on the disinterested benefactors of their species—men rarely occurring, and highly gifted, as those whose greatest happiness was centred in the consciousness of doing good to mankind; and he conceived it right and just that the acknowledgment of their services should be amply given. But these were not the men for whom he could cast his scheme of morality. Greatly as they raise themselves, in the unapproached grandeur of their minds, above the people of the every-day world, it is for these latter that codes of morality must be constructed; it is to the size of such minds that they must be fitted. It is useless to ask whether it would be better that men should find their chief enjoyment in something higher than the usual objects of ambition; suffice it that experience shows these to be the ruling motives, and therefore the instruments with which the moralist must act. He who addresses himself only to Howards and Washingtons, leaves several millions of well-intentioned men, with narrower minds and lower objects of ambition, unguided. The economy of the world would be different from its present constitution were it otherwise. "The virtue of beneficence, though its objects embrace all mankind, can be exercised to a very limited extent, and, as applied to any single individual, yet narrower is its sphere of action. And this is well;

---

objects of encouragement are discussed. See also vol. i. p. 569 *et seq.:* vol. viii. p. 395 *et seq.*

* See Works, vol. ix. p. 451.

† See Works, vol. i. p. 317; vol. ii. p. 253 *et seq.;* vol. iv. p. 18; vol. x. p. 32.

‡ The rules of politeness are discussed in "The Deontology," vol. ii. p. 132 *et seq.* The subject is commenced with the following remarks:—"The dependence of man upon his fellow men is the sole source of the extra-regarding, as it is of the benevolent principle; for, if a man were wholly sufficient to himself, to himself he *would* be sufficient; and as the opinions and conduct of others towards him would, by the supposition, be indifferent to him, no sacrifice would he make to obtain their friendly affections. In fact, such sacrifice would be but a waste, and such waste would be a folly.

"Happily for each, happily for all of us, the human being is differently constituted. Of man's pleasures, a great proportion is dependent on the will of others, and can only be possessed by him with their concurrence and cooperation. There is no possibility of disregarding the happiness of others, without, at the same time, risking happiness of our own. There is no possibility of avoiding those inflictions of pain with which it is in the power of others to visit us, except by conciliating their good will. Each individual is linked to his race by a tie, of all ties the strongest, the tie of self-regard.

"Dream not that men will move their little finger to serve you, unless their advantage in so doing be obvious to them. Men never did so, and never will, while human nature is made of its present materials. But they will desire to serve you, when, by so doing, they can serve themselves; and the occasions on which they can serve themselves by serving you are multitudinous. The intelligent will catch at opportunities which escape the eyes of the vulgar; and in these mutual services there is virtue, and there is little virtue beyond them; and happily of such virtue, there is more than those who do not possess it are willing to acknowledge or able to believe."

for, if every man were disposed to sacrifice his own enjoyments to the enjoyments of others, it is obvious the whole sum of enjoyment would be diminished, nay, destroyed. The result would not be the general happiness, but the general misery."* Again—"Take any two persons, A and B, and suppose them the only persons in existence: call them, for example, *Adam* and *Eve*. *Adam* has no regard for himself: the whole of his regard has for its object *Eve*. *Eve*, in like manner, has no regard for herself: the whole of her regard has for its object *Adam*. Follow this supposition up: introduce the occurrences which, sooner or later, are sure to happen, and you will see that, at the end of an assignable length of time, greater or less, according to accident, but in no case so much as a twelvemonth, both will unavoidably have perished."†

It is not inconsistent with an appreciation of disinterestedness, to hold that mankind would not be advanced but deteriorated, if all the shopkeepers deserted their counters to revolve schemes for the public good. The produce of the selfish industry of commonplace moral men and good citizens, is the fund with which philanthropy deals on an extensive scale. Aggrandizing, money-getting Britain, gave twenty millions for the emancipation of slaves: how could such an act be accomplished by a nation of Aristideses and Epictetuses?

Bentham's appeal to the practice of mankind was unsuccessful in this respect, that, in the separate course of action of the virtuous and the vicious man, there were so many apparent contrasts, that it was very difficult to find any common element in their motives. But even when it was explained that the former made a sacrifice of the present to the future, it did not appear that he encountered and overcame difficulties which the vicious man failed to defeat, in anything like the proportion in which the two differed from each other in the quality of goodness. "The one man," it would be said, "is wicked, and the other is virtuous; but if wickedness be a yielding to the temptations of immediate appetite, and virtue be the resistance of them, the virtuous man's life must be a continual up-hill struggle. Now we see none of this: he goes on easily and naturally; he makes no great effort to be virtuous—not even so great an effort as that which his vicious neighbour makes, and makes in vain—to reclaim himself: it must just be the natural tendency of the one to be a good man, and of the other to be a bad man." It is undoubtedly the case, that there are physiological and psychological differences, which will make the avoidance of a given act a matter of greater effort on the part of one man than on that of another; but it does not the less follow, that there is a measure of self-restraint at the command of both, and that the individual will be better and happier if it be exercised. The circumstance which misleads the world, is the ease with which self-restraint is accomplished after it becomes a habit. The drunkard must tear himself from his stimulant, with a violent effort; but the man who has overcome the first temptation to indulgence meets the recurrence with quiet ease.

In proportion as a man has acquired a command over his desires, resistance to their impulse becomes less and less difficult, till, at length, in some constitutions, all difficulty vanishes. In early life, for example, a man may have acquired a taste for wine, or for a particular species of food. Finding it disagree with his constitution, little by little, the uneasinesses attendant on the gratification of his appetite become so frequent, so constantly present to his recollection, that the anticipation of the future certain pain gains strength enough to overpower the impression of the present pleasure. The idea of the greater distant suffering has extinguished that of the lesser contemporaneous enjoyment. And it is thus that, by the power of association, things, which had been originally objects of desire, become objects of aversion; and, on the other hand, things which had been originally objects of aversion, such as medicines, for instance, become objects of desire. In the case above referred to, the pleasure not being in possession, could not, of course, be *sacrificed*— it was non-existent; nor was there self-denial in the case, for as the desire which had originally been calling for its gratification was no longer in existence, there remained no demand to which denial could be opposed. When things

* Deontology, vol. i. p. 208.
† Works, vol. ix. p. 192.

are in this situation, the virtue, so far from being annihilated, has arrived at the pinnacle of its highest excellence, and shines forth in its brightest lustre. Defective, indeed, would that definition of virtue be, which excluded from its pale the very perfection of virtue.*

But the main difficulty which has been raised against the Greatest-happiness principle, is in the allegation, that each man, in pursuing his own greatest happiness, will sacrifice that of others; and that to call upon a man to pursue his own greatest happiness in this world is simply inviting him to pillage his neighbours of their proper fund of felicity. The answer to this is the same plea on which the captain of a ship, which has run short of provisions, would recommend all the crew, both weak and strong, to submit to an arrangement for short allowance. To A and B alone it would be their greatest happiness, perhaps, to have the run of the ship's store, but there are C, and D, and E, and F, with the same inclinations counteracting them; and though A and B might resist all the calls of humanity and sympathy, and might be even able, at the moment, to carry their point of preference by force, they would run the risk of a final accounting with the law. All, therefore, see that it will be their greatest happiness to make an average division; and good ship-economy will show how this is to be accomplished on such a system as to make an equal distribution, keeping in view the number of the crew and the time they are likely to be at sea. Just so is it in the world at large. Each man feels that the best security for himself getting a share of happiness, is to give way to a certain extent to his neighbour. Such is the habit more or less in every portion of the globe; and it is in the countries where practice has settled the proportion, of how much should be kept and how much given away, with the greatest accuracy, that the end of morality has been best accomplished. The strongest counter-illustration which an opponent could find, is, perhaps, that of a despotism; but even here the principle is followed, though, according to our Author's opinion, very barbarously and unsatisfactorily. If the despot presides over a docile people who will not rebel, it is a sign that they prefer the ease of submission to the exertion of independence, and they are following their happiness in their own way. Among such a people, the temptation to play the pranks to which despotism is liable, is greatest, and, to say the truth, does least harm. But if an autocrat were calculating what course would produce him, on the whole, the greatest happiness, it is believed that he would not find it to be in roasting his subjects before slow fires, or skinning them alive, or hunting them with blood-hounds; and that the despot who has taken the best estimate of a happy reign, is he who has resolved to make his sway wise and beneficent; to do justice and to love mercy. But it is seldom that the embers of the spirit of resistance have been so completely extinguished that no gust will waken them into a blaze; and more or less, the fear of resistance holds the despot in awe, providing in his person an illustration, though certainly but a rudely developed one, of the counteraction which is supplied by the universality of the pursuit of self-enjoyment.

There can be no better illustration of the wide embracing influence of what has been denounced as "the selfish system," than its extension not only to all classes of mankind, of whatever colour or persuasion, but to every living thing to which the Deity has given, along with animal life, the capacity of physical pain and pleasure. Bentham was a strenuous supporter of the legislative protection of the brute creation from cruelty. † Perhaps in his own case he needed no train of philosophical deduction to teach him the duty and pleasure of treating them with humanity; but he thought their claims not the less worthy of attention when he could place them on the ground of self-interest. He believed that it was the interest of mankind at large to suppress all indulgence in cruelty, because the habit of being cal-

* Deontology, vol. i. p. 144-5.

† See the Works, vol. i. p. 142-143, 562; vol. x. p. 549-550.

lous to animal suffering propagates itself in crimes of violence and brutality—a phenomenon which will have to be farther noticed in its relation to the subject of Punishment. In another form he inculcated the cause of humanity on grounds of self-interest, by displaying the high intellectual nature of the enjoyment derived from its exercise.

Bentham made a rigid analysis of the various forms in which the fear of consequences check a man in the pursuit of what may be his own individual pleasure; and having ranged and grouped them, he divided them into four classes and called them sanctions—the chains, as it were, which bind a man from following his own wild will. These are, 1st, The Physical Sanction, viz., the bodily phenomena, which, in the course of human conduct, arise from certain classes of acts, and punish the individual by the painful sensation created, or reward him by the pleasurable. Disease produced by dissipation—health nourished by temperance and exercise, are the most common and the broadest developments of this sanction. 2d, The Political Sanction, which is in other words the law of the land, created for the punishment of offences and the protection of the virtuous. 3d, The Moral Sanction, which is the operation of the moral habits of the state of society he is in, so far as it affects the individual—the difference between this and the legal sanction will be afterwards particularly explained, because the two together occupy the greater part of Bentham's labours. The fourth is the Religious Sanction, acting through the Anticipative operation of future rewards and punishments. * The proper direction of these sanctions constitutes the field of labour of a man who would do good to his species. The medical man—not he who merely cures diseases individually as they are presented to him—but he who investigates them in the direction of cause and effect, and gives the world the benefit of his discoveries, is a labourer in the cause of the proper end of the Physical Sanction. He discovers the sources of disease, leaving probably to others the task of observing how much happiness a man sacrifices by encountering it, and how much happiness he will save by avoiding it. The moral philosopher is the man who deals with the moral sanction. As to the legal sanction, there are few men, from the emperor down to the non-elector wearing a party badge, who has not some influence in its operation; and a right influence is developed in the making of good laws, a wrong in the making of bad. The influence of the religious sanction is also, more or less, in all men's hands, but chiefly in that of the clergy. It is, under some circumstances, the most potent, either for good or evil. Of its operation in the former shape, no illustration will be needed in a Christian land. For the latter, we can look at all the crimes which have been produced by religious influences,—the great tragedy from which Christianity dates, the Massacre of St Bartholomew, the Inquisition, the murder of Archbishop Sharp, the persecution of the Irish Catholics.† Of the operation of the sanctions, the following is an illustration from the Deontology—it is a sort of narrative adaptation of Hogarth's Industry and Idleness. It will be observed that it admits of a fifth sanction—the social—which the author seemed to consider might either be viewed separately, or as a branch of the moral.

Timothy Thoughtless and Walter Wise are fellow apprentices. Thoughtless gave in to the vice of drunkenness; Wise abstained from it. Mark the consequence.

1. Physical sanction. For every debauch, Thoughtless was rewarded by sickness in the head; to recruit himself he lay in bed the next morning, and his whole frame became enervated by relaxation; and when he returned to his work, his work ceased to be a source of satisfaction to him.

* For the Exposition of the Sanctions, see Deontology, vol. i.; Works, vol. i. p. 14 *et seq.*; iii. 290; vi. 18 *et seq.*, 260 *et seq.*

† "Fanaticism never sleeps: it is never glutted. It is never stopped by philanthropy, for it makes a merit of trampling on philanthropy. It is never stopped by conscience, for it has pressed conscience into its service. Avarice, lust, and vengeance, have piety, benevolence, honour—fanaticism has nothing to oppose it."—*Works*, vol. i. p. 75, note.

Walter Wise refused to accompany him to the drinking table. His health had not been originally strong, but it was invigorated by temperance. Increasing strength of body gave increasing zest to every satisfaction he enjoyed: his rest at night was tranquil, his risings in the morning cheerful, his labour pleasurable.

2. Social sanction. Timothy had a sister, deeply interested in his happiness. She reproved him at first, then neglected, then abandoned him. She had been to him a source of great pleasure—it was all swept away.

Walter had a brother, who had shown indifference to him. That brother had watched over his conduct, and began to show an interest in his wellbeing—the interest increased from day to day. At last he became a constant visiter, and a more than common friend, and did a thousand services for his brother, which no other man in the world would have done.

3. Popular sanction. Timothy was member of a club, which had money and reputation. He went thither one day in a state of inebriety; he abused the secretary, and was expelled by an unanimous vote.

The regular habits of Walter had excited the attention of his master. He said one day to his banker—The young man is fitted for a higher station. The banker bore it in mind, and on the first opportunity, took him into his service. He rose from one distinction to another, and was frequently consulted on business of the highest importance by men of wealth and influence.

4. Legal sanction. Timothy rushed out from the club whence he had been so ignominiously expelled. He insulted a man in the streets, and walked pennyless into the open country. Reckless of everything, he robbed the first traveller he met; he was apprehended, prosecuted, and sentenced to transportation.

Walter had been an object of approbation to his fellow-citizens. He was called, by their good opinion to the magistracy. He reached its highest honours, and even sat in judgment on his fellow apprentice, whom time and misery had so changed, that he was not recognised by him.

5. Religious sanction. In prison, and in the ship which conveyed Timothy to Botany Bay, his mind was alarmed and afflicted with the apprehension of future punishment—an angry and avenging Deity was constantly present to his thoughts, and every day of his existence was embittered by the dread of the Divine Being.

To Walter the contemplation of futurity was peaceful and pleasureable. He dwelt with constant delight on the benign attributes of the Deity, and the conviction was ever present to him that it must be well, that all ultimately must be well, to the virtuous. Great, indeed, was the balance of pleasure which he drew from his existence, and great was the sum of happiness to which he gave birth.*

There are two main objects in view, in those of Bentham's works which are intended to influence human action—the direction of the Moral, and the direction of the Legal Sanction. The one is to instruct the individual as to what he ought to do—the other is to instruct the legislator what he ought to enforce and restrict. Where the former has been the end in view, the science has been denominated Morals or Ethics—by Bentham it was called Deontology, from the Greek το Δέον, That which should be, or which is right. Where the latter end is held in view, the science is called Politics or Political Philosophy, and embraces within it the art and science of Legislation. To this department of his general system for the regulation of human actions, by far the greater part of Bentham's works have been devoted. Although the Greatest-happiness principle be the end in view of all the author's writings, whether they instruct men how to direct their own individual actions, or teach them how to make rules for the action of others, yet there is a broad demarcation between these two subjects, beginning at the very root of both of them. That which it may be each man's duty to do, it may not be right for each legislator to enforce upon his subjects, because the very act of enforcement may have in it elements of mischief to the community, preponderant over the good accomplished by the enforcement. In other words, it may tend to the greatest happiness of society, that a man should voluntarily follow a certain rule of action; but it may be injurious to the happiness of the community in general, to compel him to follow such a rule if his inclination be against it. For instance, in the Defence of Usury, the lending and borrowing of money at high interest, for the purpose of improvidently ministering to extravagance, is condemned; but, on the other hand, it is found that the laws for suppressing usurious transactions are so mischiev-

* Deontology, vol. i. p. 118-121.

ous in their effect, that they too are condemned for precisely the same reason—their malign influence on human happiness. Thus it is, that the rule of action for the individual, and that for the legislator, are kept distinct from each other; and it is shown by Bentham, that much of the mischievous legislation which he attacks has its origin in this distinction being overlooked. Legislators forget that they have to strike two balances, and not one only, before they act. The first arises out of the question, whether a given course of action is beneficial to the human race; and when this is answered in the affirmative, there comes the second, and frequently overlooked question, whether the enforcement of it, by any laws within the power of the governing authority to put in practice, will likewise show a balance of benefit. Moreover, as legislators often forget to strike the second balance, they also often come to a general conclusion without taking the two seriatim, and, either omit altogether, or fail in taking a due estimate of the first. But it is clear that the law which is made without the first balance being struck, as well as the second, must be unapt. Unless it be first settled that the thing proposed to be done would be good if done voluntarily, there is no room for propounding the question, whether it can be advantageously enforced. It thus occurs, that the field of Deontology embraces within it the field of legislation, and that the two are not co-extensive, the latter being smaller than the former. From this want of co-extensiveness there arise mistakes in arguing from the latter to the former. The Law is a choice of evils, because coercion is itself an evil. This element of evil is not inherent in a man's voluntary acts, and, therefore, in them, no allowance can be made for it. If, therefore, a man square his voluntary morals by the law, he may act on a totally erroneous estimate of what they should be. This he is liable to do, even in the case of the law being deduced from a moral system abstractly accurate; and the circumstance, that legislators are liable to make mistakes and erroneous deductions, increases the chances against his being right.*

In pointing legislation towards the distribution of the greatest possible amount of happiness among mankind, the chief difficulty was found to consist in the adjustment of the proper proportions in which certain objects of the law, to some extent conflicting, should be respectively aimed at. These objects Bentham classified as,

Security,
Subsistence,
Abundance,
Equality.

These have all to make, to a certain extent, sacrifices to each other, and the source of difficulty is in the adjustment of these sacrifices. There can be little happiness in a state where there is no security for property; but, on the other hand, if the right of property were so absolute, that one portion of the population should be permitted to starve to death ere the property of those who happen to be richer can be touched, it is clear that there will be much misery in such a country, and that a feeling of unhappiness, most vividly experienced by those who are subjected to actual want, will spread upwards, in the form of apprehension, among those who have more or less chance of being involved by the revolutions of the wheel of fortune in such a calamity. Hence comes the necessity for a provision for the poor, that the unfortunate may be preserved from death by starvation. But the principle of security to property and industry, on the other hand, demands that this provision be so regulated, that it shall never become an inducement to able-bodied men to live upon the property of others instead of resorting to honest industry. As the Author happily says, "The treasure of the comparatively rich is an insurance office to the comparatively indigent;" but care must be taken that the Insurer be not bound

* The best exposition of the Greatest-happiness principle is, perhaps, in the Introduction to the Constitutional Code, in vol. ix. of the Works. See also vol. iv. p. 537 *et seq.*, and see the Index to the Works, *voce* Happiness.

to pay till the calamity he insures against has occurred. The law supplies this insurance office to the public by favouring abundance—allowing means for the accumulation of capital, and protecting it when it is accumulated. The various advantages accruing from the existence of capital are for consideration under the head of Political Economy.

The principle of equality has a rivalship, to a certain extent, with that of abundance. The more extensively property is distributed, the more happiness does it produce; for the amount of felicity which each person enjoys is not increased with the relative proportion of his riches. A may have nine times the riches of B without having twice as many sources of enjoyment. It would thus conduce to general happiness if there were many small fortunes and few large; but here security and abundance come in for their claims. Unless men be assured in the enjoyment of their wealth, they will not exert themselves to increase it; and that abundance, so beneficial to the community, will fail to be created. But, on the other hand, the law produces distinct mischief by favouring or compelling the accumulation of property in the person of individuals. The former it does in the hereditary system—the latter in the law of Entail. The law, besides its direct effect, has its bearing on the habits and opinions of society, and the malign influence of the hereditary principle has spread itself beyond the sphere of its mere legal enforcement. Legislation, instead of favouring the accumulation of a family property in favour of one member, should have directed an equal distribution within certain bounds; and thus, both in law and in national habits, equality would have been the rule, and the hereditary principle the exception.*

The Greatest-happiness principle may perhaps receive elucidation from some account of the most important of the subsidiary principles which its Author deduced from it,—viz., The Non-disappointment or Disappointment-preventing principle, developed in measures tending to obviate disappointment, and the pain with which it is always accompanied.

Among the cases in which he found that legislation, in its hasty and empirical course, had neglected to strike the balance between good and evil with sufficient minuteness, was that in which small clusters of individuals came to be affected by general legislative measures. He kept in view, that individual interests are the units by the aggregation of which the collective term, "the public interest," is created, and that there is no living being whose certain or probable welfare, in relation to any proposed measure, should not be thrown into the scale when its disadvantages are weighed against its advantages.† The principle, that private interests should yield to the public good, he thus so far modified, that from the amount of any public good done, he deducted whatever private interest might be injured. In estimating the evils done to individuals, he examined minutely the pain caused by disappointment, and found it to be, on arithmetical principles, greater in the average case than the pleasure of acquisition, and than the pain (if it can be so called) of non-acquisition. The income of A is taken from him and given to B—A loses his all, but B gets merely an addition to what he had before. The whole pleasure in the possession of a source of livelihood is removed from the one; the other only receives the secondary pleasure of an increase. Let A's income be dispersed among the public—he loses all, and is eminently unhappy; while that which constituted the source of his former content is distributed in portions so minute, that the amount of happiness produced by it may be scarcely perceptible. On the other hand, so long as A is left in the enjoyment of his income, according to the prospects held out to himself and to society at large, from the first,—as no man expected to obtain any of it, no one is disappointed by its not being distributed, and he himself is content. The non-disappointment principle is the great foundation of the

* See Works, vol. i. p. 301 *et seq.*; ix. 11 *et seq.*

† Works, vol. ii. p. 252.

sacredness of property. More injury than good is done, by allowing either individuals, or the public at large, to interfere with that which a man has, under the sanction of the laws, been allowed to call his own. The pain of disappointment to the proprietor is the primary evil of attacks on property. The secondary evil is the alarm to society at large,—the dread which each individual has, that he too may be the victim of spoliation.

Like the other great principles expounded by our Author, the non-disappointment principle pervades society in all its acts; but it was his task, by a minute analysis of its principle and operation, to discover cases in which its application had been neglected and misunderstood. He applied it to the principle of compensation for offices abolished, or for any other injury caused to individuals by the march of improvement. He was in favour of allowances to those whose official emoluments were affected by law reforms,* and to the owners of slaves on emancipation;† and he even hints at such a concession to the owners of proprietary seats in parliament, in the case of their disfranchisement by parliamentary reform.‡ In the estimate of the incidence of good and evil on society at large, he saw that there was a clear gain in a government following out the principle, that when a man steadily and honestly follows his calling, and makes his livelihood by it, he should feel the assurance, that no act of the government of his country shall remove it from him. But he found a secondary advantage in the principle of compensation: it has a tendency to remove the opposition perpetually operating against improvement, in the sinister interests of those who benefit by abuses. Pay off the incumbents, is thus a liberal policy, by which those who are most conversant with the operation of any institution, are relieved of a temptation to overlook or defend its defects.§ The system is capable of abuse. Offices might be created for the compensation which will accrue on their speedy abolition. But this is an evil as much to be guarded against on true utilitarian principles, as the other; and it has to be remembered, that a people who take upon themselves the burden of compensation, are the more likely to criticise the propriety of the institution created. The countries most liable to government abuses of every description —despotic and disorganized states—are, at the same time, those where the interest of individuals is most ruthlessly overwhelmed in national changes.

Bentham extended this principle to Finance, holding that, apart from other elements of good or evil, it made indirect preferable to direct taxation. It is better that a deduction should accrue to a sum of money before it reaches the possession of him for whom it is destined, than that, after being in his hands, a portion of it should be withdrawn. The operation of the principle in this department he found to be limited. There were but few cases, such as that of the legacy duties, in which the deduction could be truly said to be practicable before the money was in possession—in the case of an annual salary, the mere knowledge of the amount is nearly equivalent to possession, and a deduction before payment differs little from a charge after payment. A tax on consumption is another method in which the principle may be brought to bear. The tax is paid, in the first place, by the dealer, to whom it is, in reality, not a tax, but a portion of capital expended in the form of duty which otherwise he would have to expend on commodities. The purchaser pays dearer for the commodity; but it is maintained that, in doing so, he does not experience the same feeling of hardship which would arise if the sum charged as duty were separately taken from him after his purchase has been made. In the general case, a direct tax is a thing obligatory; a tax on consumption, unless it be on the absolute necessaries of life, calculates on its voluntary adoption by the purchaser.|| This species of tax has, it is true, its defects, in as far as it may impede or disturb commerce and

* See Works, vol. iii. p. 325; v. 505.
† Ibid. vol. i. p. 346. ‡ Ibid. vol. iii. p. 533.
§ Ibid. vol. v. p. 277.

|| See Works, vol. ii. p. 573, 580.

manufactures; but these are objections belonging to Political Economy.

A plan was proposed by Bentham for raising a revenue by the application of this principle to the law of succession, and in arranging his plan he inquired into the principles of succession, and the extent to which the existing systems in Britain are founded on reason. Whatever theorists may promulgate on the anomaly of a man dictating for his property after death, or on the principle that when the man is done with the use of his goods they should go to the state, the practice of mankind in all places and times has supported a law of succession; and an examination, on the principles of the utilitarian philosophy, vindicates the practice as a right one. He who has brought children into the world is the person against whom there is the strongest claim to support them, and the law justifies this claim by giving them his property on his death. If children have been brought up in the gratification of certain tastes and luxuries; in short, in a particular rank of life and with a certain expenditure—it is better, so long as no one is injured by it, that they should continue in the same course. The most simple and the least injurious method of giving them the means of doing so, is by continuing in their possession the wealth by which the luxury and rank are purchased, on the death of its previous holder.* Let the daughter of a labourer be left without any pecuniary provision—it is nothing but what she expected, she suffers no hardship or disappointment, and goes forth to her labour with a glad heart. Let the daughter of a wealthy landowner or merchant be left in the same position—a fearful calamity has fallen upon her—a calamity undeserved, and heavier than the punishment of many a formidable crime. So much for the case of the individuals; but the benefit of succession operates also on the public at large. The providing for a family, or, even if a man have no family, the faculty of destining his money to what purposes he pleases, is one of the greatest inducements which he can have to make and to save property—the one an increase of the general capital of the community, the other a preservation of the increased capital from dispersal. Were it not for the wife and children he will leave behind him, there are many men taxing their heads and hands to great efforts who would be idle and worthless; there are many founders of great manufacturing and commercial projects who, but for such a motive, would never have thus distributed the means of industrial wealth around them.

But it comes to be a question whether the law has not carried the operation of succession beyond the bounds within which it is useful. Between the children who have shared in their parents' fortune, and the distant relation who never heard of the wealth thrown at his feet, till some scrutinising lawyer made the discovery of his relationship, there is the greatest possible difference: there are strong reasons for the law of succession operating in the one case—none for it in the other. On this principle Bentham founded his plan that succession should open only to near relations, and not to distant. If the law were once so established and known, there could be no disappointment among distant relations, (excepting those to whom the law was *ex post facto;*) but even independently of a knowledge of the law, there are multitudes of cases where the distance of the relationship precludes expectation. It is true that a man may adopt a distant relation—the same who, in the present course of succession, would be his heir—as a member of his family, partaking in his luxuries, and acquiring habits, a sudden check on which would be a hardship. This is true; but in the same manner may a man adopt a stranger; and in either case there is proposed to be open to him the right of bequest. The line which Bentham proposed to draw, is that of the forbidden degrees. He suggested that, where the nearest relation to the deceased is beyond those degrees, there should be no succession, except through bequest. He found in this plan two secondary advantages; it would cut off a great source of expen-

* See Works, vol. ix. pp. 16, 17.

sive litigation, (of which the country, in providing judicial establishments, bears part of the expense,) in the enforcement of distant claims to relationship through obscure and conflicting evidence; and it would afford an inducement to men having property to leave behind them, to marry. The plan is developed in the tract called Escheat *vice* Taxation.*

SECTION III.

THE PURSUIT OF TRUTH.—FALLACIES.—PRINCIPLES OF EVIDENCE.

Believing that falsehood was one of the main instruments of evil to mankind—that a regard for perfect truth was one of the greatest safeguards against the various means by which sinister interest could operate to the evil of society, Bentham made war against mendacity in every form in which it could raise its head. He found that the ingenuity of sinister interest had here covered society with a net-work of evil, through the meshes of which it required the most vigorous efforts of the understanding to clear a way. He found a popular notion, that it was in certain words used, and not in the act of deceiving, that the offence of falsehood consisted. The shepherd in the fable, who promised to the stag not to give information of his hiding-place, did not tell the hunters where it was, but pointed with his finger to the spot. It was the interest of persons who had done such deeds to remove the odium from the act of betrayal to that employment of false words called a lie; but in Bentham's view, men might stumble among the ingenious intricacies of words, and he found no criterion of criminality but in the thing done through their means. Words, the simple purport of which would convey a falsehood, may be uttered in a manner and with a purpose to put the party right, and keep him from deception. On the other hand, words signifying the truth are often made a mere effectual cover to the falsehood they are intended to convey. A newspaper, the other day, wishing to show that certain operations abroad had been carried on in consequence of instructions from home, stated that such instructions had been sent out, but did not state that they had not arrived. Almost every species of commercial deception is carried on in words that are in themselves true. When emigrants are enticed to embark with their little property for a colony where they are ruined, the inducement is, in general, some perfectly correct description of luxuriant vegetation and salubrious climate, which is all deceptious, because it is not stated that there is no means of making the natural profusion available—that there is no commerce with the place—no system of inland conveyance, and no harbour. An auctioneer lately advertised an estate for sale in Canada, "containing a quantity of fine old timber," in the hope that some one who did not know that timber in Canada is worth less than nothing, might act on the advertisement. A common method of deceiving without words is, for a man to act with a political party, in its arrangements preparatory to some great conflict, for the purpose of being counted too good a friend to be questioned, and then desert it; on the plea that he never promised to support it. All these acts have in them whatever there is of evil in a lie. It has become the practice to refer to them as the "speaking the truth, but not the whole truth," an unsatisfactory expression, which seems to intimate that they have in them at least a portion of the virtue of truth. Let them be looked at simply in the result intended to be accomplished, and so judged, and then they will be seen clearly to be in every respect equivalent to lies.

As the effects of falsehood are of the most varied character, ranging from the highest crimes to the most paltry and unpunishable social frauds, there cannot

* Works, vol. ii. p. 585.

be any measure of punishment for it, (of punishment whether as administered by the Law, or by the opinion of society,) but in taking the measure of the offence which it is made the instrument of perpetrating.* A lie producing death is the offence of murder; a lie giving an undeserved character of excellence to an article of commerce for the purpose of making it saleable, is but a petty fraud. Can it be said that these offences are equal in magnitude? Yet if the offence be in the lie, and not in the effect produced by it, the criminality of the two cases is precisely co-extensive, for the verbal falsehood is as distinct in the one as it is in the other. On this point Bentham found the laws for the punishment of judicial perjury defective. The criminality was thrown on the ceremony, with which the falsehood is decked, and not on the effect produced by it. To tell a falsehood in a court of justice cannot be, under any circumstances, other than a crime of high magnitude: but between the case of a man swearing away the life of another, and that of a man swearing five pounds away from its right owner, there is surely a greater difference than between the saying the lie with, and saying it without certain formalities. Bentham made an accurate analysis of judicial falsehoods, for the purpose of measuring the extent of their criminality by that of their respective evil effects, and he introduced the new distinction between temerarious and mendacious falsehood. Among those who looked merely at the words spoken as the offence, when it turned out that the speaker did not anticipate the meaning that would be attached to them, or would not have uttered them if he had known them to be false, he was considered innocent. But Bentham, on the principles on which he who fires a pistol into a church, or drives furiously through a crowded street, is held responsible for the mischief he may occasion, did not see any reason why the individual who maims or slaughters the person or reputation of another by rash words, should not be equally responsible.†

On an examination of the various processes through which the truth, in regard to the merits of human actions, is obscured, the common practice of giving a good or bad character to motives, according to the feelings of the person who is speaking of them, presented itself as one of the most common devices of falsehood. Results are open and susceptible of examination—motives are hidden in the bosom of the actor; hence those who love darkness rather than light will more readily exercise their ingenuity in giving a character where its truth or falsehood cannot be detected, than in examining that which is spread before the world.

"It is the act, and not the motive, with which we have to do; and when the act is before us, and the motive concealed from us, it is the idlest of idling to be inquiring into that which has no influence, and forgetting that which has all the real influence upon our condition. What acts, however outrageously and extensively mischievous, but may be excused and justified, if the motives of the actor, instead of the consequences of the act, become the test of right and wrong? Perhaps there never was a group of more conscientious and well-intending men than the early inquisitors; they verily believed they were doing God service; they were under the influence of motives most religious and pious, while they were pouring out blood in rivers, and sacrificing, amidst horrid tortures, the wisest and best of their race. Motive, indeed! as if all motives were not the same,—to obtain for the actor some recompense for his act, in the shape of pain averted, or pleasure secured. The motive, as far as that goes, of the vilest, is the same as the motive of the noblest,—to increase his stock of happiness. The man who murders, the man who robs another, believes that the murder and the robbery will be advantageous to him,—will leave to him more happiness than if he had not committed the crime. In the field of *motive*, however, he may make out a case as recommendatory of his conduct, as if he were the most accomplished of moralists. To say that his motives were ill-directed to his object, is to reason wisely with him; to say that his motives had not the object of obtaining for himself some advantage, is to deny the operation of cause on effect. There is,—and the existence of the disposition is a striking evidence of the tendency of men towards despotic assertion,—there is by far too great a willingness to turn away from the consequences of conduct in order to inquire into its sources. The inquiry is a fruitless one, and were it not

* See "Swear not at all," in Works, vol. v. p. 187 *et seq.*; vol. vi. p. 297.

† See Works, vol. vi. pp. 280, 292 *et seq.*

fruitless it would be useless. For were motives other than they are,—were they fit and proper evidence of the vice or virtue of any given action,—it would not be the less true, that opinion could ultimately have no other test for judgment than the consequences of that action. A man's motives affect nobody until they give birth to action; and it is with the action and not with the motive, that individuals or societies have any concern. Hence, in discourse, let all indications of motives be avoided. This will remove one spring of error and false judgment from the mind of the speaker, and from the minds of the hearers one source of misunderstanding.*

In a minute analysis of the subject of motives, in another part of his works,† he showed that the system of appreciating motives as good or bad, even if their goodness or badness could be discovered, proceeded on a false idea of what motives really are. It is to *intention* with relation to acts, that merit and demerit are applicable; for motives in themselves are neither good nor bad. There is no motive that may not lead to the best or to the worst of actions. A desire to preserve his family from starving is called a praiseworthy motive, so long as it prompts a man to work honestly for his bread; but who shall say that it is a praiseworthy motive, when it directs him to the highway with a pistol? The mischievousness of his act we can clearly calculate—the mischievousness of his *intention* we may estimate, even if he has been unsuccessful in his attempt to put it in practice; but we shall in vain search for a just attribute to his motive.

The petty insincerities evolved in the course of casual disputes, for the purpose generally of obtaining a temporary intellectual victory, were occasionally the subject of Bentham's reprehension. He did not consider that this habit could be compared in point of evil with many of the other sources of untruth to be found in the practice of society: but it had its sphere of mischief, and was, consequently, worthy of exposure. He says:—

Avoid all arguments that you know to be sophistical. Think not, by shutting your own eyes against the weakness of your statements, that you have thereby shut the eyes of your hearer. Your sophistry will but irritate, for sophistry is not only uncandid, but dishonest. It is an attempt to cheat, not the purse of another, but his senses and his judgment. His aversion to you will be awakened by your effort to shine at his expense; and his contempt will be roused for the folly that supposed it was able so to shine. In all argument be candid, for the sake of your comrade and for your own sake. The triumph of an argument which is known and felt to be unfair and unfounded, is a wretched exhibition of perversity. If successful, it can serve no interests but those of fraud: if unsuccessful, it brings with it the consequences of blundering and detected dishonesty. Constituted as society is, with its errors and prejudices, its narrow interests and interested passions, the pursuit of truth makes demands enough upon courageous virtue; for he who goes one step beyond the line which the world's poor conventions have drawn around moral and political questions, must expect to meet with the thundering anathemas and obloquies of all who wish to stand well with the arbiters of opinion. Let no searcher after truth be led into the labyrinths of sophistry. He will have enough to do in order to make good his ground one step beyond that trodden by those who dogmatize about decorum, and propriety, and right and wrong.‡

In many established institutions Bentham found principles tending to the commission of falsehood, and to the designed obliteration of the distinction between the truth and a lie. Of these the most prominent were Oaths, in their two classes, Promissory and Assertory. A Promissory oath, such as an oath of allegiance, is an obligation taken not to know the truth; or, if it should be known, not to act upon it. It is generally imposed under the influence of bribery and intimidation—at the time when a man has the inducement of some benefit, such as the appointment to office—to harden his conscience against the iniquity. It binds the individual down to a certain line of conduct, however clearly his conscience, aided by experience and reflection, should afterwards be opened to the evil of the course. To some it is a drag, preventing them from doing what is right; for they feel that they have already registered a vow in heaven to do what is wrong. To others it is a ready excuse for the wrong they are inclined to: they have sworn to do it, and it is useless to tell them it is not

* Deontology, vol. ii. p. 155-156.

† Principles of Morals and Legislation, in vol. i.

‡ Deontology, vol. ii. p. 145-146.

right. George III. laid the responsibility of the American war, and of his resistance to the Catholic claims, on his Coronation oath: he had sworn to preserve his dominions entire: he had sworn to preserve the Church. He was the interpreter of the meaning of these oaths, and the two questions were removed from the operation of the inquiry—what is right and what wrong? The claims of mercy and justice might cry aloud,—hundreds of thousands of his own subjects might suffer the frightful death that is caused by the hardships of unsuccessful war, in the vain attempt to inflict the same calamity on hundreds of thousands of unoffending foreigners —it mattered not: the cause was prejudged, a vow had been registered in heaven, and it must be fulfilled.*

But the most pernicious of all promissory oaths are subscriptions to declarations of faith—to religious tests. They are a direct bribe to perjury—perjury which is daily committed. Whether, having serious differences of opinion on the subject, the candidate for office deliberately sets his hand to that which he disbelieves, or, purposely closing his eyes to the genuine meaning of the words, he, at the same time, shuts his ears to the voice of conscience, by carelessly signing as a "matter of course," the effect is equally pernicious in poisoning the stream of public morality—poisoning it at its very fountain, the institutions where learning, and morality, and religion are promulgated —poisoning it through the very hands of those who are under the most sacred of *real* obligations to keep it pure and uncontaminated. Bentham could never refer, without the most lively indignation, to that most flagitious of shapes in which this vice is practised, when the adherence to a certain array of complex doctrines is extracted from youth, purposely and avowedly before they are capable of comprehending them; the thing which is done when they are required, before they know the doctrines of the Church of England, to declare what side they will take after they do know them. With the same unconsciousness with which other youths have acted, and will act, he signed his adherence to the Thirty-nine Articles on entering himself at Oxford; and the act was one to which he could not refer down to the last days of his life without a feeling of bitter remorse.†

The evil effects of assertory or judicial oaths he did not find so flagrant. He held that some formality was necessary as a sanction for truth—necessary to this extent, that the witness might, by its use, be put upon his guard that he shall be made judicially responsible if he tell a falsehood. But the effect of making this ceremony a sacred invocation he maintained to be, that the criminality of falsehood was removed to the wrong place. Instead of being centered in the mischief occasioned by the lie, it was attached to the profanation of the ceremony. Thus, judicial falsehood, instead of being like theft or forgery, a crime between man and man, was converted into an offence against God. Hence it resulted, that the real ingredient in the offence was lost sight of, and that men believed that if they could stand right on the subject of the profanation, the injury committed was no wrong. Multitudinous are the devices that were fallen upon to evade the oath; for wherever a man could persuade himself that he was not pledged to the Deity, (and in many a case the conclusion has been easily come to) he was free; for neither law nor morality said it was a crime to accomplish any object by a testimonial fraud, if it were not accompanied by a false oath.‡ The danger of the fallacy is in this, that, as the sanction for truth is hidden with his other religious opinions in the breast of the witness, no one can tell whether it is in operation or not. It is a simple doctrine, the practical application of which can be easily calculated on, that if a witness, by the nature of his evidence,

* See Works, vol. ii. p. 403 *et seq.*; v. 207, 514 *et seq.*

† See Works, vol. x. p. 37.

‡ In the trial of an election petition some years ago, it came out in evidence, that young lads put pieces of paper, with the number 21 marked on them, in their shoes, that they might be able to swear they were "above twenty-one."

leads twelve men to convict another of murder unjustly, he is himself guilty of murder: but you must have found your way to the bottom of his soul, and must know his whole system of religion, before you are assured that he holds any given ceremony a sacred obligation made between the Deity and himself.*

The oath applied to jurymen in England, was one which Bentham held as *sui generis* in its absurdity and self-contradiction. Twelve men are compelled solemnly to swear that they will come to a decision according to their conscience, and they are then starved till they declare themselves all of one mind.†

Since the earlier works of Bentham against oaths were published, Legislation has made rapid strides in the abolition both of the promissory and assertory class.‡

Bentham considered the support and perpetuation of Foundations, or Institutions for the inculcation of particular doctrines, to be most dangerous to the cause of truth;§ and he likened them to funds for paying judges to decide, not according to justice, but in favour of a specified class of clients. So long as the system shall continue, of keeping foundations "sacred," as it is called, from the interference of the legislature acting upon them for the common good, they become so many centres of absolutism in the midst of free institutions—of absolutism, where there is not even that chance of improvement which may be afforded in the probability of occasional good men appearing in a succession of despots; for the despots who have thus transmitted their will to future ages, are gone, and neither hope nor fear—neither reason, nor the treasures of experience, can operate upon them to make them revoke their laws. Thus, every man who is possessed of wealth, by judiciously founding with it some institution properly calculated to the end in view, may place a perpetual barrier in the way of free inquiry, and tie down a portion of posterity to the amount of knowledge and the class of opinions possessed by the men of his own generation.|| In public national matters, legislation in some measure adapts the increased facilities to the enlarged wants of the age; systems of management make some approach to the improved habits of the time; official salaries are brought to something like a proportion, according to the state of the labour-market, with the work performed for them. But centuries pass, with their train of changes and improvements, and leave the foundation unaltered and unalterable. The legislature dare not pry into its operations, or ask what its officials are paid, or what they do; while the daily routine of the establishment, and the very costume of its inmates, proclaim it at war with improvement—a cluster of human beings, at whose gate the march of civilisation and enlightenment is arrested. The whole principle of the sacredness of foundations proceeds on a false analogy with the stability of property. Because it is good for all members of society, that a man should keep, and use for all lawful purposes while he lives, and should give to whom he pleases at his death, that which he has made, or which he is otherwise allowed to call his own,—it does not follow that it is good for the

* See "Swear not at all." Also, Works, vol. v. p. 454 *et seq.*; vi. 318 *et seq.*

† See Works, vol. v. p. 84 *et seq.*

‡ See Editor's note to Works, vol. v. p. 188.

§ Establishments for the support and influence of a dominant sect in a civilized country, are not to be confounded with funds for appointing propagandist missions to barbarous countries, or to the destitute or uncivilized portion of a community. The former have a tendency to stop inquiry, and keep back the community in the pursuit of truth; the latter have for their object the raising less intelligent classes to the standard which has been already reached by the more civilized. Apart from questions as to the superiority of one sect of Christians over another, the religious opinions of civilized Europe cannot well be propagated in barbarous Africa, without conveying some portions of whatever, in the character of the people of Europe, is superior to that of the people of Africa. But it by no means follows, that, in the same civilized society, good will be done by giving one sect power and money to bear down another. The subject of Christian missions was not investigated in any of Bentham's published works.

|| See Works, vol. ix. pp. 35, 303.

community that he should be allowed to employ it in building a barrier to stop the stream of civilisation and improvement, and to keep a certain class of his fellow-men just as enlightened on a certain set of doctrines as he is himself, and no more so. The sinister interests which support the permanence and inviolability of such institutions, are founded in the wealth they give to individuals and the power of domination they confer on classes of thinkers. When they are overwhelmed by any great revolution of opinion—such as the Reformation—those portions of them which escape individual rapacity are seized upon by the strongest sect, appropriated by them to the promulgation of doctrines the reverse of those for which the property was originally destined, and are then surrounded by the same impregnable walls of sacredness and immutability, as if they were still held in terms of the original founder's destination, and had never been wrenched from the hands of those for whom he intended them.

The "Fictions of Law," of which the English practice is so full, were repeatedly and earnestly attacked by Bentham, both collectively and in detail. The example shown to the world, of falsehoods deliberately, and on a fixed system, told in the very workshops of justice, and by those who are employed to support truth and honesty, he looked upon as holding out a pernicious example to the public. Without any sarcastic or reprehensory qualification, a fiction of law may be defined in general as the saying something exists which does not exist, and acting as if it existed; or *vice versâ*. Thus, by the system of pleading anterior to the late Uniformity Act, the defendant over whom the Court of King's Bench extended its jurisdiction, was said in the writ to have been in the custody of the Marshal of the King's Bench Prison for an offence, though no such circumstance had taken place. The court had originally no jurisdiction over any one who was not so in custody; the lie was told that the court might have an excuse for interfering; the court would not allow the lie to be contradicted, and it assumed jurisdiction accordingly. The origin of this class of fictions was of the most sordid character—the judges and other officers of court being paid by fees, a trade competition for jurisdictions took place; each court trying to offer better terms to litigants, than the others, and adopting the fictions as a means of accomplishing this object. Of another class are the Fictions as to Common Bail, Fines and Recoveries, Docking Entails, &c. Where the object to be accomplished by the fiction is a right one, it should have been accomplished directly, and without falsehood or ambiguity, by the Legislature; where the end is a wrong one, it should not have been accomplished at all. But whether used to a good or a bad purpose, it is an assumption of arbitrary power. "A fiction of law may be defined a wilful falsehood, having for its object the stealing legislative power, by and for hands which durst not, or could not, openly claim it; and, but for the delusion thus produced, could not exercise it."*

It is true that new fictions are not now invented—at least on any considerable scale; and that those formerly created have become a fixed part of the law, and are uniform in their operation. It is still the case, however, that from the nominal repetition of the fraud under which they were originally perpetrated, they are a cumbrous and costly method of transacting judicial business. But they have a much worse influence than this. By the obscurity and complexity with which they surround operations which might be simple and open, they afford concealment to fraud and professional chicanery; they exclude the unprofessional man from the means of knowing what the lawyer is doing among the windings of the professional labyrinth, and they show him that the law countenances palpable falsehoods. "When an action, for example, is brought against a man, how do you think they contrive to give him notice to defend himself? Sometimes he is told that he is in jail; sometimes that he is lurking up and down the country, in company with a

* Works, vol. i. p. 243.

vagabond of the name of Doe; though all the while he is sitting quietly by his own fireside: and this my Lord Chief Justice sets his hand to. At other times, they write to a man who lives in Cumberland or Cornwall, and tell him that if he does not appear in Westminster Hall on a certain day he forfeits an hundred pounds. When he comes, so far from having anything to say to him, they won't hear him: for all they want him for, is to grease their fingers."*

A class of chronic falsehoods had found their way into the minds of political thinkers, which Bentham, in imitation of the logicians, termed Fallacies.† Of these he undertook a laborious and minute investigation and exposure; and there were none of his extensive labours to which he looked with more satisfaction than this rooting out, from the field of political thought, of the tares which the enemies of truth had sown in it. He found that they consisted, to a great extent, in an ingenious perversion of the language of praise or blame, to make it comprehend that which did not properly come within the quality expressed: and the permanent evil to truth he found to consist in the circumstance, that by habitual use and reiteration, men came to associate the good or bad quality with the thing so spoken of, without examining it. Thus the term "old," which, as applied to men, implies the probability of superior experience and sedateness, he found used in characterizing early times, or those states of society which had not the benefit of so long a lesson of experience as later times have had.

It is singular that the persons who are most loud in magnifying the pretended advantage in point of wisdom of ancient over modern times, are the very same who are the most loud in proclaiming the superiority in the same respect of old men above young ones. What has governed them in both cases seems to have been the prejudice of names: it is certain that, if there be some reasons why the old should have advantage over the young, there are at least the same reasons for times that are called modern having it over times that are called ancient. There are more: for decrepitude as applied to persons is real: as applied to times it is imaginary. Men, as they acquire experience, lose the faculties that might enable them to turn it to account: it is not so with times: the stock of wisdom acquired by ages is a stock transmitted through a vast number of generations, from men in the perfection of their faculties to others also in the perfection of their faculties: the stock of knowledge transmitted from one period of a man's life to another period of the same man's life, is a stock from which, after a certain period, large defalcations are every minute making by the scythe of Time.‡

That the end justifies the means, is another of these fallacies. He held that both the end and the means should be weighed in the balance of good and evil. When, taken together, they afford a balance of good, then are both transactions justified; but, if more mischief be done by the means than the good produced by the end, no abstract amount of goodness can justify that end being followed.§ As a familiar example: if a man is drowning, the rescuing him is a good end in itself; but, if the method of rescuing him should involve the sacrifice of two other lives, the balance of the whole act is evil, and the end does not justify the means. "Argue not from the abuse of a thing against its use," is another fallacy. The liability to be abused is a quality which must detract from the value of anything that can be made use of. Between two institutions, equal in value in other respects, that which has preservatives against the means of turning it to abuse, is better than that which has none. Indeed, it is in the preservatives against abuse, that whatever is valuable in political institutions has its value. The sacrifices to this principle are enormous in a constitutional country. When the business could be transacted in the Government office at a hundredth part of the expense, and in, perhaps, a fiftieth part of the time, who would have it managed in Parliament, were it not for the protection afforded by the representative system against abuse? If we

* Works, vol. v. p. 234. See generally on Fictions of Law, vol. i. p. 243; v. 13; vi. 100; vii. 283 *et seq.*; 415 *et seq.*; ix. 77 *et seq.*

† See the Book of Fallacies, vol. ii. p. 375 *et seq.*

‡ Works, vol. x. p. 69.

§ Ibid. vol. ii. p. 470.

were bound to put the abuses out of view, despotism would be found to be the best form of government.

Fallacies lurk in abundance under imputations and laudatory personalities. They are to be found, also, in certain fixed party expressions: such as "Order," "Establishment," "Matchless Constitution," "Balance of Power," "Glorious Revolution." Fallacies of no small influence on society, pervade the employment of words designative of principles, as a means of indicating individuals; as where the opponents of a dominant party are called the enemies of government; and those who find fault with the doings of lawyers, are said to be in opposition to the law; terms used when there is a wish to class those they are levelled at as enemies to the preservation of property, or to the enforcement of justice. With a like object are those who attack churchmen and priestcraft called the enemies of the church, and, by inference, the enemies of religion.*

The Book of Fallacies is chiefly directed against the devices made use of on the side of corruption or arbitrary power. In a separate tract, called Anarchical Fallacies,† there is an exposition of the false logic with which demagogues, and other enemies of well-ordered society, vindicate their misdeeds. His Text-Book, on this occasion, was "the declaration of the rights of man and the citizen, decreed by the Constituent Assembly in France;" and it was while the philosopher, in his retirement, was expounding the sanguinary and anti-social reasoning of this production, that the wildest flames of the Revolution burst forth, and confirmed his prophecies ere the ink had dried on the page. In the storm of that eventful period, the small still voice of one weighing the meanings of words used, and drawing the practical inference of vague generalities, was not heeded. It is true that this was but a criticism on the meaning of words; and the time was not one for theorising but for acting. Words, however, are the expression of opinions, and opinions are the source of acts. The same opinions may again gain ground more or less, and be expressed in like words, and amenable to the same criticism; and if to the mere lover of narrative, or the partisan politician raking out from the embers of the Revolution materials for modern controversy, the philosopher's logical comment will have little interest, it will weigh much with those who have the peace and wellbeing of society really at heart. "In a play or a novel, an improper word is but a word: and the impropriety, whether noticed or not, is attended with no consequences. In a body of laws—especially of laws given as constitutional and fundamental ones—an improper word would be a national calamity: and civil war may be the consequence of it. Out of one foolish word may start a thousand daggers."‡ One of the expressions attacked in connexion with anarchical fallacies has already been noticed, in reference to Bentham's abandonment of technical terms which had been vitiated by their bad use—(see p. 14.)

Bentham considered that the Legislature, in dealing with the subject of Evidence, had in its power the means of creating and applying to practical use a store of facts, covering the whole field of human action, and forming an experimental foundation, by which every description of operation, from the proceedings of the Legislature and the judicial tribunals, to the acts of the private citizen, might be beneficially regulated. As the great means of separating what is true from what is false he thought the code of judicial evidence should proceed on the most searching examination of principles, and should be most cautiously and scientifically organized. To an examination of the principles on which that code should be based, and of the aberrations of the existing law, he de-

* See Works, vol. ii. p. 448; ix. 76. The references made above on the subject of fallacies are casual and unmethodical. A mere analytical view of the fallacies exposed by Bentham, would not be satisfactory, without embodying the exposure itself; and to accomplish that task more briefly than he has himself done it, would be a vain attempt.

† Works, vol. ii. p. 489 *et seq.*

‡ Works, vol. ii. p. 497.

voted two of the volumes now before the public;* and there is, perhaps, scarcely any other of his expositions which has been so generally adopted by all who have examined it, or which the Legislature has so decidedly (though certainly very cautiously) shown itself disposed to admit into the law of the land. The subject is divided into two great heads. The first is that which is ordinarily called Evidence—the succession of facts, from the consideration of which a belief is come to on one side or other of a statement; as in the case of a civil or criminal trial, when, from the testimony of witnesses, the conduct of persons, or the position of things, a decision is come to by those who are appointed to judge. This is called Unpreappointed evidence, because the dispute arises out of the very fact that arrangements have not been, or could not have been, made sufficient to obviate it; and the circumstances out of which the truth is finally reached were not prearranged for the purpose of exhibiting it. The other species of Evidence is called Preappointed, and consists, in general, of what are commonly called Records: authenticated statements of facts, such as are conveyed in recorded contracts, registers of births marriages and deaths, &c., reduced into a state of evidence to be applied to subsequent use, whether at the instance of the legal tribunals, or of the legislators or others, who may wish to make the facts so proved the foundation of their public or private acts.

Bringing his ruling principle to bear on the first of these great classes, he found that no species of evidence should be hidden from those who had to judge in a disputed question, unless it could be made to appear that more mischief would be done by the admission than by the exclusion. The law, instead of weighing the matter by this simple rule, has given effect to barbarous usages and prejudices, and to feelings of antipathy and vengeance. The ceremony of an oath was invented as an ordeal, at the same time with trial by battel and the ordeal of the hot ploughshares; and it so far held sway when Bentham wrote his Rationale of Evidence, that there was no exemption in criminal cases: and if a witness, from conscientious motives, or obstinacy, or evil design, refused to swear, a curtain was drawn before the light which his evidence might throw on the charge, and the accused was let loose on society, or unjustly punished, according to the side on which the deficiency might act. When large bodies of men arose with conscientious objections to oaths, the principle underwent a practical *reductio ad absurdum*, and society ran the risk of being dissolved; for there were thousands upon thousands of men with broad-brimmed hats, whose presence, when crimes were committed, exempted the perpetrators from punishment,—and so the Legislature had to give way successively in the case of the Quakers, the Moravians, and the Separatists. On a kindred ground, a witness was rejected on account of his religious creed; and justice was injured that he might be punished by the reproach thrown upon him. A man being asked in the witness box if he believes in a God, and a future state of rewards and punishments, and answering "no," is immediately rejected; his candour in admitting so very unpopular a fact, being a foundation for the inference that he cannot be depended on for speaking the truth. If he tell a falsehood, beginning his evidence by a deliberate statement of a belief in that which he does not believe, he is held an unexceptionable witness.

Another of the principles of exclusion attacked in the Rationale of Evidence is that which is founded on *interest*. It is admitted that preponderant interest in favour of falsehood may sway the testimony of a witness; but the question comes to be, who shall predicate of the extent to which it will sway him or whether it will sway him at all? Shall those be the judges in this matter who have the living and speaking man before them, with a statement of the circumstance liable to sway him, the power of cross-questioning him, and the means of punishing him for falsehood

* Works, vols. vi. and vii.

or prevarication? or shall the matter be prejudged by those who have never seen him, but who know human nature so much better than the judge and jury who *are* to see him, that they can predict precisely whether he is going to tell the truth or a lie? English practice has decided in favour of the latter alternative, and has declared that the evidence of a witness who has an interest in the question at issue must be rejected.

But the limitation of the exclusion is itself a proof of its absurdity. Interest may grow out of the whole range of human passions and feelings. Revenge, Hatred, Love, Affection, Party Spirit, may all bear strongly on the human mind, and prepare it for any description of iniquity. In vain, however, could the law attempt to measure these sources of interest, or fix a general criterion for ascertaining their existence. One species of interest only could it measure—the pecuniary; and therefore it narrowed the operation of exclusion to that ground. It thus happens that, according to the principles of English law, Damon and Pythias would not be presumed to have any such community of feeling as would endanger the strictest impartiality if one were called on to testify against the other; while, on the other hand, if Aristides could gain a farthing by swearing away an innocent man's life, he would so undoubtedly perjure himself for the sake of the farthing, that he need not be listened to.

In favour of truth there are a multitude of tutelary motives, acting independently of the operation of the law in punishing mendacity. Indolence alone is a motive in favour of truth: to support a lie through a circumstantial history, under a battery of cross-questions, is a difficult task which a man will not enter on for nothing. Religion, morality, the respect of the world, are all in favour of truth; and why should it be presumed that the slightest—the very slightest—pecuniary interest will at once break down all these barriers? In reality there are many cases in which the inferiority of the pecuniary to some other interest is exhibited in the nature of a witness's conduct, without legally disqualifying him. It is so where he pursues the ends of justice from a feeling of resentment, and incurs expense to gratify it. If he had that interest in the conviction which is expressed by the money he has spent to procure it, he would be disqualified; but the existence of an interest so incontrovertibly proved to be stronger does not affect him.

Another improper ground for excluding a witness is his being a criminal—a ground much narrowed by the later practice of all parts of the empire. It is where the crime imputed is that of perjury, that it founds the greatest doubt of the probable veracity of the witness; and on this ground Bentham meets it. A man has assuredly told one falsehood—does it necessarily follow that he will tell another? If the truth could be had without appealing to him, it might be well not to run the risk; but the case supposes the impracticability of getting at the truth without hearing him,—for that which makes a man a witness is the necessity of having his statement to make up a full view of the facts. Is, then, the certain deception arising from defective evidence, to be incurred in preference to the risk of deception from his telling a falsehood—a risk indefinitely reduced by the chance that his falsehood, if uttered, will be disbelieved, and that his character will make his evidence be scrutinizingly examined? The law in this case stultifies itself by a counter-exclusion limiting the means by which the perjury can be proved. This must be by production of the record of conviction, and no otherwise: and if this record is kept out of the way, though there may be a thousand persons (the judge included) ready to testify that the witness was convicted of perjury, his testimony is unexceptionable.

But the most mischievous of all the exclusions is that by which a man is privileged to decline giving testimony which may injure him. It is not that the injury may not in some cases be a justifiable protection: a merchant should not have the secrets of his trade dragged to light by any interested person who can ingeniously plant a petty liti-

gation in his vicinity. But to justify the privilege, the evil to be suffered by disclosure should be clearly predominant over the advantage of the evidence. It is in those cases where the right to this privilege is held most indisputable, that it is most pernicious in its effect—viz., where the harm which the witness may bring on himself, is punishment for an offence. The law says, that no man is bound to criminate himself; and thus, by unjust leniency founded upon a false analogy, the evidence of two crimes is purposely concealed; that of a crime which a witness may have himself committed, and that of another crime which he may have witnessed in the course of his own iniquities. If the laws which condemn a man be just laws, let them be enforced—if they be unjust, let them be amended. The various impediments which still stand in the way of the conviction of a criminal are the relics of a barbarous age, when might made right,—when one class of men made cruel laws, and others tried to protect themselves from their operation by frauds and fictions. When society was in such a state, that an innocent man was as likely to be hanged as a guilty, there was some reason on the side of those who thought that every legal quibble which saved a victim from the fangs of the law was a virtuous act: but in an age when nine-tenths of society are in favour of the pure administration of justice, those who encourage such impediments to their operation cast an imputation on the institutions of their country.*

It would seem, to those unaccustomed to its operation, to be an absurdity too perverse to have entered into the brain of man, to award a punishment for an offence, and then, on the plea of humanity, to take measures to prevent the criminal from betraying his guilt. It is quite true that there may be means of coming at the truth which ought to be avoided from their mischievous effects on society; but these mischievous effects can only occur in the unjust punishment of the innocent,—the just punishment of the guilty cannot be an evil. Torture is a means of coming at the truth; but the objection to it is, that the innocent as well as the guilty may suffer from the operation of the test. In the case of a man criminating himself, it is the guilty, and none other, that can be affected; and society at large gains an undoubted advantage by the proof of a crime and the consequent punishment of the delinquent. The leading principle laid down by Bentham regarding the investigation of crimes, is of the clearest and most effective character; it is simply this: adopt every measure for the exposure of the guilty, which will not involve the innocent. This principle does not admit of confidential communications by criminals to their law advisers being kept inviolate, any more than their revelations to their accomplices. Confidential communications, the object of which is to defeat the law, have no better claim to secrecy than those which have in view the commission of a crime. A change of system in this respect would probably make criminals less confidential with their agents; but it is difficult to see what harm society could suffer by an alteration which would only compromise the safety of the guilty.

The above remarks bear only on a small portion of the Rationale of Evidence. An analysis of the whole work, within the compass of the present notice, would be little more than a table of contents, and could give the reader no satisfaction. On a subject which occupies a considerable proportion of the work—that of Records, some remarks will be made further on. (See p. 72.)

* From *The Globe* of 7th December, 1842.

"Surrey Sessions, 6th December, 1842.—Charge of Stealing a Banker's Check.

"The jury, after a short deliberation, acquitted the prisoner; upon which

"The chairman, addressing him, said that he was very fortunate to have escaped conviction; for the court was in possession of a document of which there was little doubt he was the writer, and which, had it been received in evidence, would surely have led to a very different result from that which the trial had taken. The prisoner then bowed and left the dock."

The question naturally suggested by the perusal of this statement is, Whether the Surrey magistrates sit for the punishment of criminals, or for the purpose of conniving at their crimes by concealing the evidence?

SECTION IV.

SYSTEM OF GOVERNMENT.

To find out the best means by which mankind could be governed, was the chief object of all Bentham's exertions; and there is scarcely a work which he has written in which he has not some allusion to this subject. His expositions in reference to politics are divided into two distinct classes. In the one he lays down those principles and rules of action which ought to guide a people, supposed to have thrown off all trammels of prejudice and established custom, and to be in search of the very best form of government which a practical philosopher would dictate to persons ready implicitly to adopt his arrangements. In the other class of cases, in which he had immediate practical ends in view, his endeavour was to mould the existing machinery of established institutions and opinions to the production of the best practical results. The reader, therefore, must not take it for granted that the principles and institutions which are developed in the former class of works, are such as their Author would recommend a practical statesman, connected with an established government, to put into immediate operation, however much he might wish to establish in the statesman's mind a leaning to such opinions as an ultimate end of gradual change. There are projects of practical reform in the minor works of Bentham, adapted to all grades of government, from democratic republicanism in the United States,* to Mahommedan despotism in Tripoli.† It will not be expected that any development should be here attempted of the different projects of reform which he thus applied to such distinct circumstances; but some explanation of the more conspicuous features of his opinions on government will be attempted.

He held that the ruling power should be in the hands of the people, because the happiness of the people being the object of government, the means of obtaining that object would thus be in the power of those who have the chief interest in realizing it. The happiness of every individual in the community would be best secured by giving every individual the species of government he would like best. But as confliction of interests renders this impossible, the nearest approach to such universal freedom of choice is, to put the power into the hands of the majority, whose use of it will not only be that which is most conducive to their own liking, but will likewise be such as cannot be very detrimental to a minority, which, in the case of such perfect freedom, must have too many interests in common with the majority to be in any case much injured by those proceedings which may appear to the latter the most fitting. But all the people of a state large enough to enjoy a separate government profitably, cannot collectively transact the business of government; and therefore it is necessary that some artificial arrangement should be adopted, by which the closest practicable approach may be made towards acting in accordance with their opinions: hence comes the Representative system.

Bentham was of opinion that no male adult should be excluded from voting for a representative, except those who are unable to read. His criterion of a right to the franchise was therefore equivalent to that which Mr Adam has aptly called The Knowledge qualification. Bentham termed it "virtually universal suffrage," because it excluded no one who chose to take the trouble of learning to read; and it might fairly be estimated that those who refused to make this exertion were as unfit to exercise the right to advantage, as they were careless of its possession.‡ There were other persons

* See Works, vol. iv. p. 451 *et seq.*

† Ibid. vol. viii. p. 555 *et seq.*

‡ See Works, vol. iii. pp. 464, 470, 560, 565.—"Now as to the qualification by *reading*—At

besides "non-readers" who might be excluded, were it not for the complexity that would be so created—*e. g.* people of unsound intellect, and criminals. Their influence, however, would be almost imperceptible—they would not exist in any one place in sufficient numbers to be made serviceable tools of; and their votes, presuming them to be given without thought, or with a bad intention, would be likely to tell on either side of a contest with tolerably equal effect. Arrangements for excluding them would be complex and uncertain; whereas the criterion of ability to read is easily adjusted on a simple practicable arrangement, which is described in the Draft of a Reform Bill.* He was of opinion that the questions whether females should be admitted to the franchise, and how the political privileges they ought to hold should be bounded, could not be satisfactorily discussed while prejudices on the subject are so strong as they were when he wrote. †

Another of the essentials of representative government, is Secrecy in Suffrage—the system of the Ballot. The reasons will be briefly explained further on in connexion with the principle of responsibility. In the Draft of a Reform Bill, arrangements are made for conducting an election on the Ballot system, well worthy of the attention of practical reformers. The operation is to proceed on a raised platform in presence of the public and of certain officials, who all see that the elector votes for some one, without knowing for whom. In a glass-covered counter, cards are deposited bearing each the name of a candidate, a separate compartment being provided for the cards of each candidate. These cards have each a joint or hinge in the middle, admitting of their being folded double, with the name inside. At the moment of voting, no one sees these cards but the voter, who takes one of them up folded, and holding it between his finger and thumb in the presence of the public, hands it to an official, who, without seeing the name within, files it in the presence of the public. ‡ It is a necessary preliminary of such a system, that all questions as to the right of voting are prejudged, and that no scrutiny can supervene.

Annual Parliaments, and equality of Election Districts, are further arrangements of the representative system, the reasons for which are also noticed in connexion with responsibility. To obviate the inconvenience apt to be created by the annual separation of the legislature, a plan is devised for the appointment of a "Continuation committee," to keep on through a succeeding session the thread of the legislation commenced in a preceding; § an arrangement which, in conjunction with others for keeping

first blush, it seems to involve exclusion:—it does no such thing in effect. From two to three months' social pastime, at the hours of repose from work, would give it to all adults in whose eyes the privilege were worth that price: and he, in whose eyes it were not worth that price, could not, with much justice, complain at the not having it. Qualification by householdership does involve exclusion: for it is not in every man's power to pay rent and taxes for a house. Householdership is evidence of property; it is for this cause that it is required by those who stipulate for it. Qualification by payment of taxes—*that* too involves exclusion: if by payment of taxes be meant that which is anything to the purpose. Qualification by payment to indirect taxes, if those be the taxes meant, is *universality of suffrage:* for where is the human being that pays not to taxes on consumption? to the taxes called *indirect* taxes? Payment to direct taxes—to assessed taxes for example—is householdership under another name. Qualification by reading involves no exclusion: for every man who chose could give it to himself. He could do so, before a bill such as this could go through the forms, even supposing Honourable House ever so well disposed to it."—P. 560.

* Works, vol. iii. p. 565.

† See Works, vol. ix. pp. 3, 108. Perhaps the following would be the just utilitarian method of treating this question. At the present moment there is, perhaps, not above one female in a hundred who wishes to possess the franchise. The extension of it to the sex would be a sacrifice of the peace and happiness of the ninety-nine to the ambition of the one, and even the agitation of the question would be a modified annoyance to the former. It will perhaps be time for seriously considering the question, when the majority of the sex show an inclination to have a voice in Parliamentary Politics.

‡ See Works, vol. iii. p. 571.

§ Works, vol. ix. p. 170.

projects of law once brought before the legislature from dropping out of notice, would prevent the public time from being unprofitably wasted, by being devoted, as that of the British Parliament frequently is, to the furtherance of measures which are afterwards lost sight of.

The arrangements for the strict attendance of the members of the legislature, and for economically adjusting the time at their disposal to their duties, form the subject of many stringent provisions in the Constitutional Code.* It is provided that the executive ministers of the state shall be present *ex officio*, in order that they may be questioned, may afford instruction and explanation, and may even originate measures and join in the debate—but they are not to have the privilege of voting.† That the superior experience and knowledge which the judges must possess, of the state of the law, and of the amendments from from time to time necessary to improve it, may be applied to practical use, an official communication with the legislature is kept constantly open to them; and to prevent their suggestions from being neglected, provision is made for these being incorporated in the body of the law, if the legislature, after the proper formal intimations, do not interpose a veto.‡

In the British Parliament much of the time that should be devoted to the general legislation of the country is wasted on local and private projects. Of these there are some that should be appropriated to the Courts of Law—others should be managed by Local Legislatures.§ The arrangements of such local legislatures, in subordination to the supreme body, are provided for in the Constitutional Code.||

A hereditary legislative body is an institution utterly at variance with the first principles of that republican system, which Bentham considered to be the best form of Government in the abstract—the best form that could be adopted, if circumstances should give an unlimited variety of choice. But he was decidedly of opinion, that any second chamber, whether elective or hereditary, can operate to no good. It occasions delay. It makes rivalry and conflicts between house and house, which tend to the public detriment. It prevents decisions from coming clearly out, as between majority and minority, very often making a small minority of the collective members of the Legislature triumphant over a majority. The practical result of such a system, in the end, generally is, that the one house becomes the originating and working, and truly legislating body, while the other, finding itself incapable for good, has nothing to boast of but its capacity for mischief; the extent of which is the more palpably shown the more useful are the measures it resists. The services presumed to be performed by a second legislative body, in the shape of inquiry, and the deliberate and accurate inspection of measures before they are sanctioned, are all capable of being adapted to the legislation of a single chamber, through the instrumentality of committees.¶

* Works, vol. ix. p. 163-170.

† Ibid. p. 316. ‡ Ibid. pp. 431, 504-508.

§ "Of cases in which, for want of due discrimination between the duties peculiar to itself, and those not peculiar to itself, the Supreme Legislature stands exposed to the danger of wasteful application of its time, examples are the following :—

"Inquiry and decision as to a case in which property belonging to an individual is required to be transferred to Government, for some supposed preponderantly beneficial national purpose: and thence as to the quality and quantity of the compensation due. In this case the appropriate authority would be, not the Supreme Legislative, but the Judicial.

"Taxation, for the expense of works, the benefit of which is confined within the limits of particular portions of territory: say of peculiar *districts*. In this case a more apt authority would be, that of the sub-legislature of the district.

"So, if for any local purpose, common to some district.

"So, a transfer for a merely private purpose: the arrangement being clearly conducive to the mutual benefit of all parties; and the transfer capable of being made without detriment to the general sense of security and respect of property. Here the appropriate authority would be the judicial authority of the district."—Works, vol. ix. p. 118.

|| Works, vol. ix. p. 640 *et seq.*

¶ See Letter to Fellow Citizens of France

In considering the proper arrangements for the conduct of business by a supreme legislature, it was found, that very little improvement could be made on the practice of Parliament; which, in Bentham's opinion, made the nearest approach to abstract perfection, which has been exhibited by any human institution. To those who are accustomed to expect in his works nothing but censure of existing institutions, the chapter, "on the mode of proceeding in a Political Assembly in the formation of its decisions," in the Essay on Political Tactics,* will be a remarkable exception. The chief elements of this excellence were found in the perfection of the machinery for preventing anything from going forth as a vote of the body, which had not been verbatim subjected to the inspection of its members; the arrangements, which rendered it impossible that a subject of debate could drop without being disposed of in some shape or other; the accurate line of distinction between debating and voting; and that scientifically arranged system for considering propositions in conjunction with their amendments, which admits of a vote being separately taken, upon every modification of a proposition which may happen to be before the house. He was of opinion, that the preservation of the liberties of the country was, in a great measure, owing to a firm adherence to the forms of Parliamentary tactics; and he attributed the contrast which they afforded, with the tedious, complex, and perverse forms of judicial practice in England, to the circumstance, that while the legislature had the distinct and rapid despatch of business honestly at heart, the proceedings in the Courts of Law were tortured and twisted to suit the sinister ends of the various parties—the suitors, the lawyers, the witnesses, and even the judges themselves. The work on Political Tactics was written with the design of doing a service to the National Assembly of France;† but, in that mob-arena, its rational views, and the practical application of them, were alike unheeded.

This loose sketch of the leading principles of the system of government, developed by Bentham in his Constitutional Code and other works, would be incomplete without the statement, that, according to his plan, the head of the government is the Prime Minister, chosen by the Legislature.‡ Of the methods by which checks are kept upon the power of this official; of his relation to the heads of departments, and the machinery by which their duties and powers are limited and connected with each other, it would be impossible to give anything like a satisfactory view in this sketch; and reference must be made to the substance of the Code.

An important feature in all the political writings of Bentham, consists in elucidations of the means by which men intrusted with power may be prevented from abusing it to the public prejudice. Considering all the transactions of the Political authorities, including the administration of the law, as subject to two checks—the direction of superordinate political authorities, and the control of public opinion—he searched for the best means of enforcing these securities, and found it in the principle of individual responsibility. To this end, he desired that every judicial or administrative act should be so done, that it might be seen by whom it was done, and under what circumstances. With this view he preferred individual management to board management. Where there are several persons concerned in giving effect to an operation, responsibility rests with no individual, and cannot be accurately partitioned among all. The relief from responsibility releasing each individual from the anxiety to do right, renders the appropriate industry and skill unnecessary. If one head and one pair of hands can transact the business, it will not be better done if half-a-dozen heads and a dozen pair of hands of the same skill and

---

on Houses of Peers and Senates. Works, vol. iv. p. 419. See also, ii. 307 *et seq.*; ix. 114 *et seq.*

* Vol. ii. p. 330 *et seq.*

† See Works, vol. ii. p. 299.

‡ Works, vol. ix. p. 208.

ability join in it. If one person cannot do the whole, or if a man be found eminently skilful in respect to one part of the transaction, and unskilful as to others, let the operation be divided accordingly; keeping this in view, that whatever a man is expected to do, or does, it be known and seen whether he does it, and how. On the same principle, there are objections to the administration of justice by more than one judge at a time; and in this case there is the additional argument, that a difference of opinion known to exist among judges of equal rank, power, and means of information, unsettles the law, and encourages litigation.*

But the principle of individual action does not extend to the legislature. The object in this case is, not the transaction of the official business of the country, but the direction and the control of its transaction, for the benefit of the people by whom the legislature is constituted. It might be practicable to take the votes of the whole people for one ruler to be elected by the majority; but besides many other risks and inconveniences attending on it, such a system would leave totally unrepresented some class of political thinkers, which might be nearly as large as that by which the ruler was elected. The greater the number of representatives, the greater will be the number of persons represented, and the nearer will be the approach made to that point of abstract perfection, which would result in everybody being represented. At the amount, however, beyond which legislative business cannot be easily or advantageously transacted, the number of legislators must be limited; and thus the problem of representation cannot be worked out without a certain number remaining unrepresented. But though there is a necessitated community of action in a legislature, individuality of responsibility may be preserved—preserved in the proper quarter—between representatives and represented. It is held that the representative should, so long as he is in that position, be actually, so far as is practicable, the person which his designation announces him to be—the representative of the opinions of those who have chosen him. It is not possible that, on every question which may come before the legislature, his own opinion will be precisely that of the majority who voted for him. It is not, as a point of morality, recommended to him to adopt measures which his conscience repels, because his constituents approve of them. But it is his duty, if such a difference of opinion arise between him and his constituents, that, had it been anticipated before the election, he would not have been elected by them, to resign his seat. On the representative committing such an act of self-sacrifice, however, no dependence is placed; and a system of arrangements is expounded in the Constitutional Code, and the Election Code or Reform Bill, calculated to have the effect of removing, with the least practicable inconvenience and delay, any representative whose opinion is at variance with that of the majority of his constituents. The most important and comprehensive of these arrangements is the annual election of representatives; by which, not only is the period during which a representative can be acting at variance with his constituents reduced to a comparatively short one, but a periodical intercommunication has place between electors and elected, conducive to the interchange of information regarding each other's sentiments.†

The principle of personal responsibility, carried through all other departments of the state, ceases with the constitutive or the elective constituency—the source of all political power. The interest of the individuals constituting the greatest number of the people is, that the government should be conducted favourably to the interests of that greatest number. Thus the general interest is each man's personal interest. When any one is transacting that in which his personal interest alone is at stake, he need be responsible to no other person;

---

* See Works, vol. iii. p. 571 note; iv. 125; v. 17; vi. 557.

† See Works, vol. iii. pp. 512 *et seq.*, 588, 600; ix. 191.

and the interference of another will be more likely to lead him astray than to put him right. The elector, if uninfluenced, gaining nothing by his choice but his share in the results of good government to all, votes accordingly for the man who, as a legislator, will act to that end. But if his vote for a person who will *not* act, as a legislator, for the general good, be made more valuable to him than his chance of a share in the results of good government, he will, in the general case, vote in compliance with that stronger interest. Hence the operation of bribery and intimidation at elections. Secrecy of suffrage, or as it is commonly termed the ballot, is the remedy held out for this disease. As the candidate cannot know whether or not the service has been performed, it is held that he will not give the wages. It is held that, since there is no means of detecting the nonfulfilment of his bargain, the bribed elector is in the same position, as to interests, with the unbribed—*i. e.*, his interest is identical with that of the public at large, and in favour of good government; and that the candidate, knowing this to be the case, will not throw away his money.*

But it is essential to the efficacy of this arrangement, as well as to the securing the majority in the legislature to the actual majority of the voters, that the electoral districts should be equal. Where one voter, by reason of his being in a small constituency, has as great a voice in the choice of a representative as ten have in a large constituency, then there is the temptation to bring against each elector in that small body ten times the amount of corruptive influence that will be brought against each constituent in the larger, or to single the former out for a concentrated attack. Thus, even were secrecy of suffrage conceded, without equalization of election districts, so great might be the corruptive power brought to bear against the small constituencies, that all practical barriers in favour of secrecy might be broken through.†

SECTION IV.

LAW REFORM.

The promulgation of the Laws is a prominent subject in a great proportion of Bentham's works. He held, that a rule of action which the person whom it was to affect could not make himself acquainted with the purport of, was worse than no rule—a despotic arrangement for enabling one man to be cruel to another—a project for catching people in traps, for the advantage, or it might be the amusement, of those who set them. Speaking of the common law of England, he says, "Do you know how they make it? Just as a man makes laws for his dog. When your dog does anything you want to break him of, you wait till he does it, and then you beat him for it."‡ The defects which the English system exhibits in this respect, have had their origin in the neglect of the utilitarian principle—the neglect, in the preparation and execution of the law, of the very object for which those who make it would admit that it should be made—the good of the community. The ultimate object, for instance, of the criminal law, is to do good to mankind by the prevention of crimes. The immediate object is the punishment of individuals committing crime. In the discharge of this latter object, the former and ultimate one has been frequently forgotten. A man commits a breach of the law—he is punished, and all concerned consider they have done their duty, and trouble themselves no further. The criminal says, that if he had been aware of the existence of such a law he would not have broken it; but he is answered by the old adage,

* See Works, vol. ii. p. 368; iii. 487, *et seq.*, 547.

† See Works, vol. iii. p. 569; ix. 109.

‡ Ibid. vol. v. p. 235.

ignoratio juris neminem excusat. Presuming him to speak the truth, is it not an immediate inference, that it would have been better had the offence never been committed at all, than that, having been committed, the perpetrator is punished?

It is a feature, too, of unknown laws, that they have to fight society by detail. When it is known to the public at large that the commission of a given act will be met by a specific punishment, they, in general, take the alarm collectively and abstain from it. They know, perhaps, that if they all break the law in a mass, they could not all be punished; but, like Fielding's mob confronting a man with a cocked pistol, no one of them is assured that he may not be the victim. But a hidden law is a poignard—none know of the presence of the deadly weapon but those who are stabbed by it, and their immediate neighbours. Such a law will often exhaust the power of its administrators before it produces any palpable effect. There are abundance of victims, but there is little proportional amendment.

There are two means by which the laws may be brought within the reach of those whom they bind. The one is by making them in themselves simple, concise, and uniform: the other by adopting adventitious means of promulgating them. In both respects there are many defects in the law of England. The common law, which is the result of the traditionary lore of ages, is in the position of the books of the Roman law before they were digested under the superintendence of Tribonian,—a mass which defies the industry of any ordinary lifetime to master its contents. Its bearing upon any given point, instead of being contained in an enunciated command by the legislature, is to be solved by the interpretation of multitudes of unauthorized comments, or conflicting decisions. It possesses the additional evil, that, even when its tenor seems to be comprehended, no man can tell whether what he has so come to the understanding of be in reality the law; for it has received no authoritative sanction from any legislative power, and is only the opinion of certain unauthorized commentators.

The other department of the law—the statute law—is indeed the command of the authorized legislature: but it is a command perplexed by unintelligible language, confused, gigantic in its proportions, and deficient in internal facilities for reference and discovery. When a law is to be altered, there is an act passed, "to amend an act," &c.; when there is another alteration, there is an act passed, "to amend an act—to amend an act," &c., &c.* There is a popular method of referring to acts of Parliament as being such a chapter of such a session (*e.g.* the act 57 Geo. III. c. 101); but when reference is made in the amending statute to that which is amended, there is no such abbreviated mode adopted,—the act is described by its title, so that it can only be found by a search among all the acts of the session. In popular language too, the acts are divided into sections, which are numbered consecutively: but this facilitation is unknown in law, and consequently the section of an act, when an alteration of it is made by any subsequent act, is only referred to by vague description. In one session of Parliament there are frequently upwards of a hundred acts passed, and many of these will be found to contain upwards of a hundred sections; yet when, in a future session, there is an alteration made on one of these sections, it is only singled out from the mass in the vague manner above described. It will generally happen, that some members of the official establishment chiefly connected with the operation of any series of statutes will have mastered their contents; while the public in general are profoundly ignorant of

* Specimen of the title of a statute,—The 57 Geo. III. c. 101:—

An act to continue an act intituled, *An act farther to extend and render more effectual certain provisions of an act passed in the twelfth year of the reign of His Majesty King George the First, intituled, An act to prevent frivolous and vexatious arrests; and of an act passed in the fifth year of the reign of His Majesty King George the Second, to explain, amend, and render more effectual the said former Act; and of two acts passed in the Nineteenth and Forty-third years of the reign of His present Majesty, extending the provisions of the said former Acts.*

the whole subject, or know it only in so far as they may have suffered by making mistakes. Yet there are collections of statutes so extensive, that it may be questioned if even those official persons whose peculiar duty it should be to enforce them are well acquainted with their contents. There are at this moment (1842) upwards of 130 statutes, more or less in force, in relation to the Stamp Laws.

The main remedy proposed by Bentham for the evils arising out of the confusion and bulkiness of the laws, is in codification,—in a general revision of the existing laws, the rejection of the antiquated and useless portions, (for there are many acts, still part of the law, which are not enforced, solely because our civilized age affords no machinery for executing them, or because public opinion would set too strongly against any man who would have the barbarity to put them in force,) and the reduction of those parts which should be preserved, to a clear order, and to precise and intelligible language. The objections to this project are not in the form of argument, but in the simply negative shape of the neglect to perform that of which the utility is so clearly proved. The good to be accomplished would be great; but the labour too would be great: and no Atlas has been found among ministers of state to put his shoulders to the task. Nor does there seem, indeed, to be any individual on whom the responsibility of the nonperformance of this mighty task can be specially thrown—it is simply a great and difficult project, for the public benefit, unperformed. It is true, that Bentham did himself offer to undertake this task: that he left behind him fragments of its execution in almost every branch of the law, and that he completed the constitutional branch in a shape rendering it fit for use, whenever those who have the power shall have the inclination to adopt it. But it was, perhaps, still less to be expected, that any code of his own fabrication should have been accepted of, than that the justice of his earnest pleadings, in favour of a simplification of the law, should have been admitted, in some attempt to prepare a code under other auspices. A code, drawn up by Bentham, must have not only received the advantages of his clear arrangement and accurate legislative style, but must, in substance, have conformed with all his opinions of what the law ought to be. It would not have been the laws of England consolidated or embodied in a code, but a new code of laws, prepared on the utilitarian system. It was one thing to admit his reasoning in favour of a code, but another and a totally different thing to admit that the code ought to embody in it the principles of the utilitarian philosophy. The Constitutional Code is, for instance, a system of government arrangements adapted to a republic. Of the many who might be favourable to codification, few might be republicans, and still fewer would be ready to attempt to achieve a republic in this country. The Code Napoleon was the adoption of Bentham's opinion in favour of codification; but the great patron of that measure, while acknowledging the advantage of having the laws simplified, would have been among the last men in the world to permit Bentham to prepare the substance of the laws which were to be so reduced to order.

It is true, that Bentham would not have been deterred by restrictions and limitations from devoting his time to the service of the public as a legal draftsman. If he had been directed, by those in power, to simplify any branch of the law, reserving our feudal institutions, and reserving, likewise, any other peculiarities in the laws, which the government had come to the resolution to leave unchanged,—while regretting the barbarism which adhered to machinery, in his eyes antiquated and cumbersome, he would have been ready to devote his time and talents to the task of fitting them for such good uses as they were capable of accomplishing. He exemplified this disposition in his Project of a General Register of Real Property, communicated to the Real Property Commissioners. In his cor-

respondence with foreign countries, indeed, he showed how ready he was to turn the least promising institutions to use; and, in the case of the Tripoli papers, we find him suggesting a series of arrangements, by which the protection of personal liberty may be made consistent with an Eastern despotism, and a limited toleration with the principles of Mahommedanism.*

But the principle of codification has not been without some practical concessions to its utility by our legislature. The statute penal law of England has been brought into a state far more nearly resembling a code than it was when the author wrote the greater part of his attacks on it. Improvement and codification have here gone hand in hand; and the system, perhaps, only waits for the removal of some of its relics of barbarism, to be finally condensed into a code, as concise and intelligible as the plan on which our Acts of Parliament are drawn will admit of. A further concession to the principle is to be found in the consolidation of the Customs and Excise laws, and the laws regarding shipping, which are intimately associated with them. The plan taken, with regard to the far more complicated department—the Custom House Laws, was this. In 1825, search was made in the Statute-book for all existing acts relating to the customs, and they were repealed in the mass. It would appear that the duty of deciding what statutes did, and what did not bear on the subject of the customs, was too onerous to be undertaken even by those who had all the appliances and ends of the government in their favour; for when the Customs laws were again reviewed in 1833, it was found necessary to pass a general repealing clause as to, "All acts and parts of acts relating to the Customs," without any farther attempt to enumerate them,† (3 & 4 Will. IV. c. 50.) The ground being thus cleared, a Custom House Code was created, in ten statutes, each embracing some distinct department of the Customs and Navigation Law. The cumbrous form of our statutes, and their incapacity to provide any system of division and arrangement, prevented this code from approaching to the state of order and intelligibility which its author, Mr Hume, seems to have been anxious to achieve for it; but he endeavoured to compensate as far as possible, by marginal headings and an indicative rubric, for the necessarily unarranged substance of his acts; and these Customs acts are the only statutes which are divided into compartments bearing a resemblance to the division of a literary work into chapters. In the interval down to the year 1833, many additions had been made to the Customs laws; and, to prevent confusion, all these additional laws, along with the consolidated Statutes of 1827, were repealed, and new consoli-

* Works, vol. viii. p. 555 *et seq.*

† The number, and the heterogeneous nature, of the subjects frequently embraced in one act, render it extremely difficult to trace the whole legislation of the Statute Book on any one given subject. The following is the title of the act 23 Geo. III. c. 26: "An act to continue several Laws for the better regulating of pilots, for the conducting of ships and vessels from Dover, Deal, and Isle of Thanet, up the rivers of Thames and Medway; and for permitting rum or spirits, of the British sugar plantations, to be landed before the duties of Excise are paid thereon; and to continue and amend an act for preventing frauds in the admeasurement of coals within the city and liberty of Westminster, and several parishes near thereunto; and to continue several laws for preventing exactions of occupiers of locks and wears upon the river Thames, westward; and for ascertaining the rates of water-carriage upon the said river; and for the better regulation and government of seamen in the merchant service; and also to amend so much of an act made during the reign of King George I., as relates to the better preservation of salmon in the River Ribble; and to regulate fees in trials at assizes and *nisi prius*, upon records issuing out of the office of Pleas of the Court of Exchequer; and for the apprehending of persons in any county or place upon warrants granted by Justices of the Peace in any other county or place; and to repeal so much of an act, made in the twelfth year of the reign of King Charles II., as relates to the time during which the office of Excise is to be kept open each day, and to appoint for how long time the same shall be kept open each day for the future; and to prevent the stealing or destroying of turnips; and to amend an act made in the second year of his present Majesty, for better regulation of attorneys and solicitors."

dated statutes were constructed from their fragments; thus rendering it unnecessary for the searcher among the customs laws, to go farther back than the year 1833.*

While urging the utility of a general code, and the importance of a complete or partial reconstruction of the law, Bentham did not lose sight of the immediate practical advantages of an improvement in the system of drawing the statutes so as to make them more intelligible to the public, and consequently more serviceable as rules of action. In an examination of the vices of the existing method of drawing acts of parliament, he found that there was a departure from the common colloquial and literary language of the country, which, instead of diverging from it in the direction of precision and conciseness, led to vagueness and verbosity. The departure from the ordinary forms of expression was thus an evil, not compensated by any advantage in the shape of a more scientific style. He found that there was unsteadiness in respect of expression, occasioned by a want of fixed words having definite ideas connected with them. The draftsman, not having in his mind any distinct nomenclature, overloads his work by employing a number of words to mean the same thing, lest, if he should restrict himself to one, he might choose one which did not fully embrace the meaning intended. In this manner, that which could have been well accomplished by the use of one word with a determinate meaning, is imperfectly accomplished by the use of several words without any fixed signification. Thus, there frequently occur such pleonasms as "all the powers, authorities, methods, rules, directions, penalties, clauses, matters, and things," "use, exercise, apply and put in execution,"† &c., all referring to the same thing, but by their number rendering what they refer to more vague instead of more clear. It is an additional defect referable to this source, that when the same thing is thus mentioned more than once, the collection of words by which it is referred to does not happen to be precisely the same on each occasion, and thus dubiety is created in the mind of the reader.

It was found that clauses of acts, instead of consisting of separate enactive propositions each with its own verb, constituted each of them, a series of sentences heaped together, the same verb serving for a variety of propositions. The bad effects of this system are two—it makes the sentence too long for full and clear apprehension by ordinary intellects; and it renders it liable, from its complexity, to dubiety and ambiguity of interpretation.

In an English act of Parliament, in each section the connexion given to the matter is commonly such, that when once the mind has entered upon it, no repose is to be had till it has reached the end of it: no, nor then neither, unless such be the strength of its grasp as to give assurance of its retaining, in a full and distinct point of view, the whole mass of the matter which, parcel after parcel, it had in the course of its progress through the section been taking up.

So much worse than absolute redundancy is longwindedness, that if in any instance, under the oppression produced by longwindedness, it were deemed necessary to seek relief, —relief would in many, and indeed in most instances, scarcely be to be found on any condition other than that of adding to the number of words. . . . . .

Another imperfection of the first order, to which this imperfection of the second order will, whether constantly or not, be naturally and frequently conducive, is *bulkiness*. As the entanglement runs on, the obscurity thickens —as the obscurity thickens, it attracts more and more the attention of the penman:—fearing lest the mass should grow too involved, and through much entanglement too obscure for use, he sets himself to disentangle it—to point out this or that distinction in the provision meant to be made respecting the subjects thus involved. But as by words it was that the matter was entangled, so it is only by words that the disentanglement can be effected, or so much as aimed at: and thus it is, that while increase is given to *obscurity*, so is it to bulkiness.‡

* See on the subject of Codification, vol. iii. p. 155 *et seq.*, 205 *et seq.*; iv. 451 *et seq.*, 503 *et seq.*; v. 439, 546 *et seq.*

† Quoted from the Income Tax act, 5 & 6 Vic. c. 35.

‡ Works, vol. iii. p. 248-251. See on the subject generally—Nomography, or The Art of inditing Laws, vol. iii. p. 231 *et seq.* No better examples could be given of statutes drawn on the principles recommended by Bentham, than the Illustrations of his own system given by

So much with regard to those internal qualities in the construction of the laws, which might serve to make them accessible as a rule of action. An external means of accomplishing the same end, is, in the Promulgation of the laws when they are enacted, among those whose obedience they demand. Bentham looked

Mr Symonds, in his communication on the "Drawing of Acts of Parliament," presented among the Parliamentary papers in 1838. The following is a portion of the act 4 & 5 Will. IV. c. 31, for the reduction of the 4 per cents, given along with Mr Symonds' improved draft. It has to be noticed that in his original there is a clause for explaining the abbreviated expressions used by Mr Symonds.

EXISTING ACT.

I. Be it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that all and every person and persons, bodies politic or corporate, who now is or are or hereafter may be interested in or entitled unto any part of the National Debt redeemable by law which now carries an interest after the rate of four pounds per centum per annum, and is usually known by the name of "Four per centum annuities one thousand eight hundred and twenty-six," payable at the Bank of England, and who shall not signify his, her, or their dissent in manner hereinafter mentioned, shall, in lieu of every one hundred pounds of such four pounds per centum annuities, respectively receive and be entitled to the sum of one hundred pounds in "The new three pounds and ten shillings per centum annuities," and to carry an interest after the rate of three pounds and ten shillings per centum per annum, and so in proportion for any greater or less amount than one hundred pounds of such four pounds per centum annuities respectively; and that the dividends thereof shall be payable half-yearly, at the Bank of England, upon the fifth day of January and the fifth day of July in each and every year; and the first dividend, namely, one quarter of a year's dividend, on the said new three pounds and ten shillings per centum annuities shall be payable at the Bank of England on the fifth day of January one thousand eight hundred and thirty-five; and that the said new three pounds and ten shillings per centum annuities shall be subject and liable to redemption at any time after the fifth day of January one thousand eight hundred and forty, and not before that period; and that the said new three pounds and ten shillings per centum annuities shall be free from all taxes, charges, and impositions, in the like manner as the said four pounds per centum annuities.

II. And be it further enacted, That the interest and dividends payable in respect of the said new three pounds and ten shillings per centum annuities shall be charged and chargeable upon, and shall be issued and paid out of, the Consolidated Fund of the United Kingdom of Great Britain and Ireland, in the same manner as the interest and dividends of the said four pounds per centum annuities respectively now stand charged on the said Fund.

III. And be it further enacted, That all and every person and persons, bodies politic or corporate, who shall not, on or before the twenty-eighth day of May one thousand eight hundred and thirty-four, signify his, her, or their dissent from accepting and receiving a share in the said new three pounds and ten shillings per centum annuities, in lieu of his, her, or their respective shares in the said respective four pounds per centum annuities, or for any part of such respective shares in such last-mentioned annuities, in the manner hereinafter directed, shall be deemed and taken to have consented to accept and receive the same: Provided always, That if any proprie-

IMPROVED DRAFT.

II. CONVERSION OF FOUR PER CENTS.

1. *Conversion.*

£3½ per cents.] AND BE IT ENACTED, That the said four per cents shall be converted into three-and-a-half per cents.

2. *Redemption.*

Period of Redemption.] And such new three-and-a-half per cents shall not become redeemable until the fifth day of January one thousand eight hundred and forty. And thenceforward they shall be redeemable.

3. *Consolidation.*

New three-and-a-half per cents.] And the several annuities of three-and-a-half per cents created by this act shall be consolidated with the annuities bearing interest at the rate of three-and-a-half per cent existing at the time of the passing of this act, called the "New three-and-a-half per cent annuities." And these annuities shall be one capital or joint stock.

DISSENTS.

1. *Rights of Dissentients.*

Payment of Dissentients.] AND BE IT ENACTED, That every person who dissents from accepting the new three-and-a-half per cents in lieu of the said four per cents shall be paid off.

Periods of Dissenting.] But all persons so dissenting shall signify their dissent to the Bank of England, within the time specified in the schedule of dissentients, contained in the Appendix of Schedules.

2. *Absent Dissentients.*

Proof of Absence.] And in order to entitle a dissentient proprietor, absent from the United Kingdom, or from Europe, to the extended periods given in the said schedule, he shall prove to the satisfaction of the Governor and Di-

upon this service as one of the most unexceptionable in which the public money could be employed. He considered that every practicable means should be adopted for bringing before the eyes of the citizen the laws he is called on to obey, and that, in their distribution, profusion is the safer error. He thought that so much of instruction in the laws as could be conveyed to the mind in youth should be taught in schools, and that the books in which the laws are printed, if not given gratuitously, should be purchaseable at a merely nominal price. He proposed that the portions of the law which affected particular classes of persons should, separately from the general body of the law, be distributed among those whom they particularly affected. Thus, each soldier on enlistment should receive a copy of The Soldier's Code,* and each mariner on joining his profession should receive a copy of The Seaman's Code. † An individual conducting a trade subject to the operation of the Revenue laws, should, on the same principle, have a copy of The Revenue Code.

He proposed that each separate description of contract should have a species of paper set apart to be used in embodying its terms; and it was one of the services to be accomplished by this arrangement, that the paper should contain on its margin, an abridgment of the law relating to the contract. In markets and other places of public resort, the peculiar regulations of which might be of sufficient brevity for being so promulgated, the old Roman system should be adopted, of having them legibly set forth on tables adapted to public inspection. In Courts of justice, the forms of Procedure, and the respective duties of the Judges, the Officers of Court, the Lawyers, Parties, Jurors, and Witnesses, should be exhibited in the same manner.‡

To enable the public the better to

---

tor or proprietors of the said respective four pounds per centum annuities shall not have been within the limits of the United Kingdom at any time between the eighth day of May and the twenty-eighth day of May one thousand eight hundred and thirty-four, both days inclusive, but shall have been in any other part of Europe, it shall be lawful for such proprietor or proprietors to signify such dissent at any time before the sixth day of July one thousand eight hundred and thirty-four: and if any such proprietor or proprietors shall not, at any time between the eighth day of May and the fifth day of July one thousand eight hundred and thirty-four, both days inclusive, have been within any part of Europe, it shall be lawful for him, or her, or them to signify such dissent at any time before the first day of March one thousand eight hundred and thirty-five; such proprietor or proprietors proving to the satisfaction of the Governor and Directors of the Bank of England, or any two or more of them, his, her, or their absence from the United Kingdom, or out of Europe, as the case shall happen, and that his, her, or their share or shares of such four pounds per centum annuities stood in his, her, or their name or names respectively, or in the name or names of any one or more trustee or trustees on his, her, or their behalf, on the eighth day of May one thousand eight hundred and thirty-four, in the books of the Governor and Company of the Bank of England; and provided also, That such proprietor or proprietors so absent from the United Kingdom, or out of Europe, shall signify his, her, or their dissent within ten days after his, her, or their return to the United Kingdom. rectors of the Bank of England, or any two of them, (1.) The fact of absence, within the times limited in the schedule; and, (2.) That his share of such four per cents stood in his name, or in the name of a trustee on his behalf, on the eighth day of May eighteen hundred and thirty-four, in the Bank books.

* See Works, vol. ix. p. 355.

† Ibid. p. 412. This arrangement is proposed in conjunction with a Plan for registering merchant seamen, and for defining their duties and the power of their officers. The principle of these suggestions has been realized in the Merchant Seaman's Act, 5 & 6 Will. IV., c. 19.

‡ See, generally, as to the Promulgation of the Laws, Works, vol. i. p. 157 *et seq.*; iv. 455; vi. 65, 522, 578.

comprehend the full tenor and object of the laws when promulgated, he proposed that they should be accompanied by a *Rationale* or series of reasons. The necessity of adopting such a course would, he maintained, make the laws themselves more rational; for legislators, being bound to give reasons to the public, must have reasons to give, and would not be likely to frame laws on the dictate of caprice or tyranny. An acknowledgment of the principle is to be found in the Preambles of Acts of Parliament; but as in this case there is only one general reason given for the tone, as it were, of the whole statute, and not a reason for each individual enactment, the check is, necessarily, very imperfect. Having the reasons along with the laws, the public, it is believed, would not only have more confidence in the justice of the enactments, but, seeing their use, would have a guide to honest and sincere obedience, which the simple terms of the command conveyed in the law itself might fail to provide them with. There have been many breaches of law that would never have occurred, if those who had committed them had been reasoned into the opinion that the laws were just.*

The principles on which the judicial establishment of a country should be founded, occupied Bentham's mind from an early period of his life to the end of his days. In 1790, he published the draught of a Code for the organization of the Judicial establishment in France;† and the arrangements there suggested only differ in their being less fully developed, from those which he embodied in the Constitutional Code,‡ at different times subsequently to the year 1820. In both, there is a system of Local courts, for the purpose of bringing justice as near as it can practicably be brought to every man's door; the general principle of admeasurement being such as will allow every inhabitant of a district to go to and return from the Judgment seat in one day. In both works, and in almost all his numerous works on Law Reform, he desired that justice should be administered in each court by a single judge, for the reasons of which a sketch has been given in the preceding Section in connexion with responsibility (see p. 50-51.) He thought that the habits of a practising lawyer, keeping the mind in a constant state of active partisanship, did not form a suitable school for judges, whose duty it is to hold the scales of justice with a steady hand. On the other hand, he considered, that permitting any class of men, not trained to the study of law and the weighing of evidence, (*e. g.* justices of peace and municipal magistrates,) to administer justice, was nothing better than a permission to one section of the community to sport with the property and liberties of all others. His own plan contemplated the education of a class of lawyers for the bench. He suggested the appointment of deputes to the regular judges; and, through the instrumentality of this arrangement, he would provide for those who have been induced to fix upon the bench as their profession, getting an introduction, and the opportunity of practice and experience, as assistants in the lowest grade, rising thence according to their abilities and exertions.§ He held that the judgment-seat should be accessible at all hours of the day and night—that justice should sleep only when injustice slept. To provide this accessibility at the smallest cost, is the object of many minute provisions in the Constitutional Code.‖ The delays occasioned in England by the system of circuits and vacations, are the object of repeated and severe denunciation.¶

A common feature of both his earlier and later works on judicial reform is, the appointment of Public Prosecutors, and of Advocates for the Poor.** The latter proposition is connected with the

* See Works, vol. iv. pp. 454, 491, 538; viii. 517; ix. 1.

† Ibid. vol. iv. p. 285.

‡ Ibid. vol. ix. p. 454 *et seq.*

§ See Works, vol. ii. p. 22; iv. 357, 368; ix. 544 *et seq.*, 592.

‖ Ibid. vol. ix. p. 515 *et seq.*; iv. 356.

¶ Ibid. vol. iv. p. 336; vii. 243, 371 *et seq.*

** Ibid. vol. iv. p. 354 *et seq.*, 384 *et seq.*; ix. 516 *et seq.*, 570 *et seq.*, 577 *et seq.*

view, that justice, instead of being sold to the highest bidder, should be presented gratis, whenever this can be done without preponderant mischief. The evil that might occur from offering the assistance of the law to every one who might desire it, without cost or personal exertion, would undoubtedly be the entailment on the community of ceaseless lawsuits, carried on by all its litigious members. On the other hand, there is the consideration, that it is not he who gains it only who profits by a lawsuit, but that the public have an advantage, in the establishment of a precedent, and the exhibition of justice vindicated. The expense of employing lawyers in the vindication of a just claim, is of itself sufficiently oppressive: the addition of taxes on law proceedings, and fees to the court and its officers, is simply the taking advantage of an opportunity for pillaging the oppressed. The opinions of Bentham have been so far conceded to, that taxes on law proceedings have been abolished, and that fees have been, in almost all the courts of the empire, much reduced. Still the nation does not provide sufficiently for justice being done to the helpless. When a man, because he cannot afford to pay for it, is denied the service of the law to procure justice, it is proclaimed that the nation is still only on its way from that state of things "where he should take who has the power, and he should keep who can."*

He considered the system of having different courts for the adjudication of different classes of causes, to be most perniciously productive of complexity and expense. The division of the English system — a division happily unknown in Scotland and in the rest of Europe—into common law and equity, afforded him a flagrant exemplification of the evil. The law by which each man's rights and duties are defined should be homogeneous,—each portion connected with the others, and the whole capable of being brought within the grasp of one mind. If one judge cannot administer the whole law, what chance has any private citizen of knowing enough of it to keep him from transgression? It does not follow that the division of the law into two systems makes any approach to a division of labour. The effect generally is—and it is strikingly developed in England—to make each portion more complicated and extensive than the whole would be under a uniform system. The very preservation of the boundaries between two such systems creates a science by itself. He thought, however, that while the jurisdiction of the courts of ordinary law ought to be partitioned according to geographical principles solely, that there was still room, in the case of persons separated from the position of the ordinary citizen, for tribunals having in view the administration of their rights and obligations among each other. On this principle he contemplated courts-martial, and ecclesiastical courts, as tribunals of exception.†

With regard to trial by jury, on which Bentham has written much,—partly in relation to the best method of reforming it, and partly for the purpose of rationally limiting its operation,—he was of opinion that, in the case of criminal charges, it was a necessary protection; but that the existing system demanded many reforms, and among others the discontinuance of unanimity, and the abolition of the Grand jury. In civil actions, he thought the operation of the system should be much restricted. He objected to the unbending rule which forces the case before a jury, when both parties might prefer the decision of a judge. He considered that the part which a jury has to act—that of a committee of the citizens at large to watch the operations of the bench—need not be so palpably exhibited, and that it might be presumed that the judges have honesty and public spirit enough to do right, without the constant presence of so imperative a check. In a country where there is publicity for justice, and a high tone of public opinion, he be-

* See Works, vol. ii. pp. 211, 431, 573 *et seq.*: vii. 199

† See Works, vol. iv. p. 334; v. 473, 525; vi. 134; vii. 291 *et seq.*

lieved that supervisance, especially if added to the influence of the appeal system, would make judges cautious, and would secure a nearer approach to clear substantial justice, than can be found in the oscillations of the jury system. He proposed then, that in ordinary civil cases, the jury should be had recourse to only in the way of appeal,* —a plan by which, while no one who wished to have his case judged "by his country," as it is termed, could complain that the boon was refused him, the number of jury trials, and, consequently, the expense of the system, would be much diminished. In the Constitutional Code, the juries, under the republican system there promulgated, are merely to be assessors to the judge, under the title of Quasi-jurors.†

The method of so conducting the proceedings of the courts of Law, that they might administer justice accompanied with the smallest possible amount of delay, vexation, and expense to the litigant, is a subject referred to in almost all the works of Bentham, which bear on law reform. One work, "the Principles of Judicial Procedure," ‡ is devoted to the organization of such a system. The various facilities for coming rapidly at the knowledge of the question at issue, keeping up a communication between all the parties concerned in the discussion, securing obedience to the decision pronounced, &c., cannot be here enumerated; § and it will be impossible to go into detail beyond a slight glance at that principle of personal responsibility, which peculiarly characterizes the whole system. As the public interest requires personal responsibility on the part of all public officers, so does it on the part of those who, by an appeal to the law, exercise the privilege which every one should be possessed of, of demanding the performance of judicial services—in other words, of litigants. To this end it is a leading principle of judicial procedure, that litigants should be confronted with their judges and with each other, that they should be questioned as to the statements on which they found, and that they should be made responsible for falsehood, whether it be uttered with the deliberate design of deceiving, or be rashly stated without that amount of consideration which a man gives to his words when the consequences of a mistake fall upon himself. The litigant is to be entitled to employ a professional assistant; but grades of professional lawyers transacting different departments in lawsuits—as represented by barrister and attorney in English practice—are objected to. In an ordinary lawsuit, the country attorney receives his client's communication, and transfers it to the town attorney, who communicates it to the barrister. From the variety of the channels through which the history is thus communicated to the judicatory, impediments are created to the discovery of the party who may be the author of any falsehood that may have been uttered; and there is a general frittering away of responsibility for the proper conduct of the cause. Let the party himself be accessible when wanted, and let him have but one adviser between him and the judge: falsehoods will then be easily traced to their source, and being so traceable, will not be so readily committed.||

The privilege possessed by counsel, of stating facts which they do not believe to be true—whether in civil or in criminal cases—is denounced as tending to the perversion of justice, and to the confusion, in those quarters where bad example is most dangerous, of the distinction between right and wrong—between truth and falsehood. The false morality of the profession, on this point,

* See Works, vol. ii. p. 122.

† Ibid. vol. ix. p. 554 *et seq.*

‡ Beginning of vol. ii. of the Works.

§ In connexion with the subjects of Evidence and of Punishment, some of the views in relation to procedure are elsewhere incidentally noticed.

|| In the operations of Procedure, various incidents are found which tend to fritter away personal responsibility. Thus, witnesses examined on affidavit are represented in the minutes of evidence in the third person; and there is thus an article of confusion introduced which prevents them from determining whether their evidence is accurately minuted or not.—See Works, vol. vi. p. 439.

is repeatedly and severely attacked by Bentham; and his animadversions have in view the alternative of either producing a legislative remedy, or, by the force of reasoning on the public and the profession of the law, of raising the standard of morality in relation to this practice. To see the full extent of the hardships that may be occasioned by fraudulently false, or lax statements in relation to lawsuits, it must be remembered, that the very fact of requiring to be a party to a litigation is itself a hardship, which, if it cannot be saved to the party who is in the right, should at least be so arranged that its pressure may be as light upon him as it can be made. The person who, by a certain document called a writ, can compel another man to lodge a document in answer, or to appear before a court, possesses a power of persecuting his fellow citizens, which no one should possess uncontrolled. If there were no punishment, by the infliction of costs or otherwise, on the *malâ fide* suitor, his power of annoyance would be nearly absolute; and it is precisely to the extent to which there is a check on his privilege of telling falsehoods, that the public are protected from the machinations of the judicial persecutor. Where there are great inequalities in point of wealth, the extent of hardship which may be thus committed is enlarged; and thus the rigorous enforcement of veracity, in legal pleadings, is the poor man's protection against the tyranny of the rich.*

SECTION VI.

PRINCIPLES OF PUNISHMENT.

The end of punishment is the prevention of crime; and all punishments inflicted under any other impulse, are wasted, or run the risk of being so. There is no other criterion of punishment which can be a fixed one. There may be mistakes and disputes as to what description of punishment is in reality best calculated to prevent crime; but with this principle in view, reasoners have a common field of argument; and the course of experience, enriched by the collection of statistical facts, will check aberrations, and bring the disputants more closely to each other in their mutual approach to accuracy. Those principles of punishment, if they can be called principles, which are involved in popular dicta, are as vague and indefinable as the human mind is various in its passions and prejudices. The simple word "ought," sometimes involves the whole of the principle expounded. Murder *ought* to be punished with death. Forgery *ought* to be punished with death, &c. The supporters of a ministry will say, "sedition ought to be punished with transportation," because they wish to humble and persecute their opponents. The opposition will say it ought not to be so punished —wishing to protect their friends from evil. When a riot takes place at an election, the party injured says the conduct of the mob was "dastardly brutal and ruffianly, and a parcel of them should be hanged:" those on the other side "are far from vindicating the conduct of the rioters; but it was a mere petty ebullition of party spirit, and a few days imprisonment will be a severe enough retribution."

But it is not only in offences of a political character that the divergencies of the popular principle of punishment are exhibited. Each man, with his mind concentrated on his own interest and pleasure, holds all offences that militate against them as the most atrocious with which society can be visited; and when he has the power, he acts the Nero and Domitian, and exterminates those who give him trouble. Thus is it that the landholders of England, being resolved, at all hazards, to preserve to themselves the sports of the field, and having the power, through their pre-

* See, besides the Principles of Procedure, Works, vol. ii. pp. 58, 73, 577; iv. 318; vi. 136, 297, 337; vii. 202, 230, 262, 373.

ponderant representation in parliament, of making what laws on the subject they think fit, have enacted a code of game laws, which renders the preservation of the lives and morals of the people secondary to securing the monopoly in the destruction of hares and pheasants; and makes provision that the country should become depopulated by the transportation of criminals, rather than that the squire's preserves should be thinned.

When an attempt is made to involve the popular feeling on the subject of punishment, in a proposition or principle, it does not in general become more reasonable. It is said that the punishment "should be equivalent to the offence;" or "should be of the same character as the offence;" or "should be like the offence." There are no two things which less admit of real parallelism (however much they may of imaginative) than punishments and offences. Of two persons, precisely in the same rank of life, and of the same bodily frame, the one gets the other held down by accomplices, and inflicts on him certain blows with a stick. In this case it would not be difficult to assign a punishment precisely the parallel of the offence. But take another case. A thief puts his hand in a banker's pocket as he is returning home from business, and extracts therefrom a bundle of bank notes. Where are the elements of similarity in the position of the two parties, out of which a punishment similar to the offence can be created? Nor, if the problem of finding a parallel could be solved, does it appear very distinctly how the public could be benefited by the elaboration of such a specimen of curious uniformity.

But another principle of punishment, and by far the most common, (for it has existence in many a bosom which is unconscious of its presence,) is retaliation —in other words, revenge, or obedience to the impulse of wrath. The case of an election mob cited above, may serve as an illustration. The principle of retaliation is frequently vindicated, as if it could be reduced to a fixed rule: but how can it be so, since, as has been already shown, there can be no parallelism between punishments and offences? For the very small number of cases which occur, exactly in terms of the instance of assault above cited, it would be easy to fix the rule of retaliation, by making the punishment identical with the offence. But who is to make a rule of retaliation for the banker robbed of his notes? The legislator has the whole field of inflictions out of which he may choose one which shall be a retaliation, and it is needless to say that his view of retaliation will be whatever his passions dictate. If the legislature should consist entirely of bankers, when he who has been robbed joins his peers with an empty pocket and inflamed passions, which sympathy and common interest propagate through the assembly, the retaliation, it is easy to believe, will be fierce and crushing. If the legislature should consist entirely of spendthrifts and pennyless younger sons, the sympathetic excitement would not be so intense, and the punishment would be more reasonable. If the legislature should consist of blacklegs and pickpockets, the worthy banker would be laughed at, and sent about his business. This last result, intended to exemplify the fallacy of any appeal to parties interested in an injustice, is not without a modified exemplification in this country. Bentham repeatedly refers to the exemption of real property from simple contract debts—the power of landed proprietors to undertake pecuniary engagements and protect their property from being seized in fulfilment of them. It was not until after his death, that this anomaly was partly rectified. *

It has to be noticed, that the retaliatory and other barbarous principles of punishment have produced counter-fallacies among those who have been groping about for the sound principles of punishment, and have been unable to find them. Thus, those who have an indistinct view of the defects of the punishment of death, say, "You are not entitled to deprive any man of the life which God has given him;" or, perhaps, "you are not permitted to take life, but

* See Works, vol. v. p. 533; vi. 85.

for the crime of murder." There is a text in Scripture which, referring to the effect of violence in rousing the retaliatory propensities of mankind, says, "Whoso sheddeth man's blood, by man shall his blood be shed"—meaning, that while men are beings of passion as they are, one violent death will naturally follow another. It is under the shadow of what is apparently a misinterpretation of this text that the exception to the rule as to the title to punish with death is generally ensconced. It is to capital punishment that the question of title is usually restricted, but sometimes it is extended to others—thus, "you are not entitled to make a slave for life, of a man born free," &c.—the term, for life, being generally inserted, because, if the punishment of slavery or the restriction of liberty were abolished, it would be difficult to find a means of inflicting any punishment on any one who has not palpable property capable of being seized. In the utilitarian system, the question of title is very simply disposed of, by striking the balance of good and evil to society at large. If there are cases in which the infliction of the punishment of death leaves a balance of good—that is to say, if more evil would be done to society through the inducement to crime that would exist were the punishment more lenient, than the evil occasioned by the infliction of the punishment—then let death be the allotted penalty. It will be for every man who has anything to say in the legislation of his country, to examine the question according to his abilities, to strike the balance, and to act accordingly. The conclusion come to by a member of the legislature will bear strongly on the result: that of an elector will have less effect, and that of a non-elector whose influence on the legislature is merely that of reasoning, will have still less: but it behoves them all, as members of society, to take the same method of coming to a right judgment.

It has been already remarked, that the Utilitarian Philosophy, like the Baconian, has not tended so much to point out any perfectly new direction to the human intellect, as to keep it steady in a course of which it had previously but a slight and vague knowledge, and from which it was every now and then straying. There is perhaps no department of the subject in which this is better developed, than the philosophy of punishment. On appealing to a moderately educated man in any civilized country, he would probably be found to admit, in some vague or general terms, that the object of punishment is the repression of crime. Yet so far have men, in the pursuit of their secondary ends, lost sight of this, the main one, that in England it became a general feeling, that it mattered not how many murders were committed, provided some one were hanged for each. Of the legitimate results of a scientific inquiry into the subject on the utilitarian principle, such as that carried on by Bentham and his disciples, the improvements which, for several years past, the legislature has been making in the administration of criminal justice, are so many illustrations.

In calculating the proper weight of punishment, the first element that comes into consideration is the offence. When it is scientifically examined, an offence is found to consist of more elements of evil than those which directly meet the senses. Bentham found a simple method of classifying the evils of a mischievous act, by dividing them into the primary and the secondary.* A man is murdered on the high-way: the death of the individual is the primary evil. The secondary evils arise out of the danger there exists of other people being murdered either by the same man, or by others following his example, and the alarm so occasioned in the neighbourhood. But it depends on a number of minute circumstances, what will be the extent of this danger and alarm, and, as a consequence, what will be the best legislative measures for protecting the people against them,—and hence arises Bentham's scientific analysis of crimes and their results, and his rules for adapting the punishment to the exigencies of each occasion.

* See Works, vol. i. p. 69 *et seq.*, 215 *et seq.*; vi. 535.

To this end, in looking at the consequences of a mischievous act, among other circumstances, the following are kept in view: 1st, The state of the actor's mind as to voluntariness or involuntariness. Thus, deliberate murder shows a disposition at war with mankind, from which any one may suffer who is in the position of supplying the assassin with a sufficient motive; while death, occasioned by carelessness, shows a want of respect for life, which the public must protect itself from; and uncontrollable accident is a source of mischief which punishment cannot protect from, and as to which its infliction would be thrown away. 2d, The motive of the offender. Thus, the motive of acquisition being in continual action, is found to be the most dangerous. When a man slays for vengeance, he only strikes his enemy; if he be allowed to go unpunished he will be prepared to slay some one else, but not till there has been a cause of enmity. The example of his impunity will encourage others to slay also, but only their enemies. But when a man murders for the sake of robbery, he acts on a motive which all men feel more or less towards all others; and those whom impunity encourages to follow his example, see victims in all of their fellow-beings who have anything to be deprived of. Other circumstances to be held in view are, the situation of the perpetrator in regard to the means of repeating the act, his means of concealing such acts, his means of escape, the obstacles he has overcome, the extent of temptation which was necessary to induce him to combat with them, &c. The position of the party injured must also be taken into view. Females, children, and invalids, require protection from acts against which able-bodied men need none. The poor require protection from injuries to which the rich are not liable,—such as oppressive litigation. The rich, on the other hand, have their peculiar demands, chiefly arising from the superior amount of their property, on the protection of the law. There are, besides, many other circumstances in which the richer and higher classes of society are subjected to evils which do not fall on the lower. Their tastes and habits are more fastidious, and should be protected from wanton outrage. They possess a greater proportion of objects in which there is a "value in affection,"—such as heir-looms, old pleasure-grounds, &c.; and the law ought to look on these as having a value beyond their mere intrinsic worth.*

When the extent of the evil to society occasioned by each offence, has been as accurately estimated as human knowledge and reason admit of its being, the counteracting power, in the shape of punishment, has then to be graduated accordingly. And here it has to be kept in view, that the infliction of punishment is itself an evil—an evil not only to him on whom it is inflicted, but to the community by which the trouble and expense of inflicting it have been incurred. Every item, therefore, of punishment, beyond what is necessary to the production of preponderant good, is punishment wasted—is a wanton act of mischief—is a crime. If it can be proved that a crime can be suppressed by the infliction of a year's imprisonment, and that the extension of imprisonment to two years will not make the suppression of it more complete, or tend more to the benefit of the public,—then is the imposition of an imprisonment for two years, instead of for one year, a wanton act of injury. It is seldom that the superfluous punishment is designedly added to the necessary: the whole is generally awarded in rashness and ignorance, and thus resolves itself into the minor offence of a want of due care for the welfare of the public. Who shall justify the infliction of a year's imprisonment, wantonly inflicted upon a man, though he be a criminal? If a justification be offered, let the following case, for the sake of distinctness, be taken. A man is tried for an offence, and the adequate punishment awarded against him is a year's imprisonment. When he leaves the prison, he is again seized, and subjected to another year's imprisonment; not because he has committed any fresh offence—not because his previous punishment was inadequate—but

* See Works, vol. i. p. 322.

because he has been a criminal; and such a person may be punished, just as the prejudices and passions of those who administer the law may dictate.

The penal code being an institution intended for the benefit of the public at large, and the public consisting of individuals, there are two classes of persons prominently interested in its administration, whose claims have been overlooked in empirical systems of criminal law—the criminals themselves, and the individual against whom the crimes are committed. The principle of vengeance is at the root of the omission in both cases—the laws retaliate on the criminal, and the act of retaliation is considered a sufficient compensation to the injured. The utilitarian system views the matter differently—conceives that the person who has been robbed is not a savage, who is to be satiated with the blood of his adversary—and enjoins the criminal to labour to the end of making compensation, so far as it may be practicable, to the injured party. With regard to the criminal himself, the punishment, on the principles above laid down, must not be more than what is necessary to serve the legitimate purposes of punishment. If, while he is undergoing it, the convict can be reformed, there is not only a positive good done to himself, but a benefit is conferred on society, by restoring to its bosom a useful and moral man, at the expiry of the period of imprisonment. If, along with the accomplishment of this object, and of compensation to the injured party, the criminal can be compelled or induced to work, so as wholly or partly to defray the cost of his imprisonment, there is a still farther gain to society, by the reduction of a heavy burden—a burden which has a tendency to weigh against the zeal of the public in the enforcement of the laws.

Looking beyond the individual himself, to the effects of his punishment on society at large, reason will be found for deciding that it should be exemplary. As this is the element from which it derives its quality of awing the public into obedience to the laws, there might at first sight seem reason for concluding that the punishment cannot be too severe for such a purpose; but a little consideration will show, that it is its adaptation to this end that makes it chiefly of importance that the punishment, if brought up to the point which will be sufficient to deter by example, should not exceed it. Where punishments are not meted to offences, the criminal classes of the population see that the law hits at random; and, with the characteristic improvidence of their order, they gamble on its chances. Moreover, where punishments are unpopularly severe, the people will not give their assistance to the enforcement of the laws. The annals of English jurisprudence present even the official guardians of the law, the judges, joining with prosecutors, juries, and witnesses, in saving the criminal. The punishment of death for forgery has strikingly illustrated this truth. At the present moment the duellist is confounded with the assassin who steps behind his enemy and secretly stabs him. The public feel that the duellist injures society and should be punished; but they revolt at such a barbarous confusion of names and punishments: and the man-slayer escapes by the connivance of the witnesses, the jury, the prosecutor, and the judge himself.

To deter others by the force of example, the punishment must, as nearly as human means can make it, follow the crime with the same regularity with which natural effects follow their causes. The *certainty* of imprisonment with hard labour will do far more in the way of prevention than the *chance* of suffering death. A proper allotment of punishment is one of the main ingredients in this certainty—others have been devised by Bentham, in his projects for the reform of criminal procedure.

It is necessary to the efficiency of the penal law, in the way of example, that the offence and the transactions concerning the trial and punishment, should not be encumbered with a barbarous technical nomenclature, which may shroud the real nature of the connexion between the crime and its punishment from the public eye. It is further necessary that the innocent

should not be involved with the guilty —a result produced by the forfeitures, and corruption of blood, of the English law. The punishment should be awarded in virtue of a fixed law, and should neither actually be, nor appear to be, influenced either in increase or diminution by the will of an individual. Thus, laws awarding extravagant punishments, with a power of pardon or diminution, are unserviceable in the way of example. The punishment fixed by the law is either too high or not too high. If it be too high, it should be reduced: if it be not, the exercise of the pardon power, popularly called the prerogative of mercy, is an injury to society. Thus, wherever the pardon power is rightly exercised there is tyranny in the law—where it is wrongly exercised it is itself tyranny.

It is of the highest moment, for the sake of example, that the punishment should proceed, as far as may be practicable, before the eyes of the public. This object, as well as that of the reformation of the convict, is defeated by the plan of transportation to distant colonies. The criminal is removed from the sight and knowledge of those companions in iniquity to whom it is essential that his punishment, coupled with its cause, should be present as a perpetual warning; and instead of a lively consciousness of the sufferings and privation he is undergoing, experience too truly shows that they often envy his imagined lot, and raise day-dreams of independence and a wandering life in distant and fruitful lands, which serve a very different purpose from that of a solemn warning to depart from their evil ways. Another main object to be kept in view in punishment, is the avoidance of contamination. This is an evil which needs no further explanation. At the time when Bentham wrote, the jails were academies for instructing the youth, whom a petty indiscretion or a small offence had driven to them, in the higher and more complex walks of crime. Many reforms have been made in this department of prison discipline: but the repeated complaints of the press show how much remains still to be done.

It was to accomplish these objects, in relation to punishment, that Bentham devised the principles of prison discipline, expounded in his work on the Panopticon. The plan of the building, which was to admit of an inspection of all parts from a central point, was suggested by the architectural ingenuity of his brother, Sir Samuel Bentham. In this institution the prisoners were, without being subjected to the enervating and uncivilizing influence of solitary confinement, to be kept from communication with each other. They were to be kept at hard labour. As unproductive compulsory labour for the mere sake of punishment is in itself uneconomical, has no influence in improving the criminal, and tends to sour and harden his mind by the daily recurrence of inflictions, which have no other end but his personal vexation, the convicts were to be taught useful trades, as an encouragement to work; and, that they might have some opportunity of knowing how pleasing are the fruits of honest industry, they were to receive a portion of the results of their meritorious and successful exertion. They were to receive the ministrations of religion, and, to a certain extent, to be educated. Provision was made to supply them with a sufficiency of wholesome food, to ventilate all their apartments, and to keep them clean. Various methods were propounded for keeping their intellects from being stagnant, or viciously employed, when their hands were idle. And, finally, to prevent their being thrown upon the world with a tainted character, which might, by depriving them of the means of gaining their livelihood honestly, drive them back upon their old courses, arrangements were proposed for providing them with employment after their period of imprisonment had expired.*

But the founder of the Utilitarian

* On the subject of Punishment generally, see the Rationale of Punishment, Works, vol. i. p. 388 *et seq.* See also the Principles of Morals and Legislation, at the commencement of vol. i.; iv. p. 1 *et seq.*; ix. 22 *et seq.* On the subject of the Panopticon, see vol. i. p. 498; iv. 39 *et seq.*; xi. 96 *et seq.*

system, looking upon punishment of every description as the application of medicine to a moral disease, goes back into the operations of the mind, that he may discover the causes in which the disease has its origin, and prescribe a regimen conducive to the preservation of the moral health of the public. In a system of punishment, he sees the political sanction only put in motion; but he finds that the Religious, and the Moral or Popular sanction, have each their respective spheres of action, in which they may be employed to restrain the mind from vicious inclinations. It is not by its restrictive action, in regard to this or that individual offence, that either of these sanctions will operate in its largest shape; but, by superinducing on the mind habits of thought so much opposed to crime, that when an opportunity of committing it occurs, the principle of restraint being an established feature in the mind, there is no actual struggle to resist the seeming temptation. In ordinary acquisitive crimes, the operation of the sanctions is strongly marked. To the greater portion of the well-educated and well-trained part of the population of Britain, an opportunity of committing a lucrative theft can scarcely be said to hold out any temptation; and the question, whether detection and punishment would be likely to follow—*i. e.* whether the political sanction would be called into operation, is not considered, for the religious and moral sanction have long ago fixed the course of action. Of the beneficial effects of the religious sanction, it is needless to adduce illustrations in a country where its influence is so strongly felt. As its good influences, however, are powerful, so are its evil, when it is directed to bad purposes. Its evil effects are—religious wars, persecutions, and assassinations; polemical disputation carried to the extent of rousing the bad passions; priestcraft; superstition; spiritual pride; and that chronic hypocrisy, so vividly exhibited in the character of Tartuffe, which, without directly assuming religion as a cloak to crime, arrogates a special familiarity with the Deity, which sanctifies all the worldly desires, and bad passions of "the elect." As an illustration of the extent to which the operation of the sanctions may be ramified, the serviceable employment of the moral sanction in the prevention of violent crimes, may be found in the practice of inculcating humanity to animals in children. Minds callous to one description of animal suffering will not sympathize with another; and the murderer is nursed in the torturer of kittens. The knowledge of this truth is evinced in Hogarth's stages of cruelty, and in the popular belief that butchers are incapacitated to serve as jurymen. As already stated, Bentham was desirous that the legal sanction should be brought to the aid of the popular in this department, and that cruelty to animals should be restrained by strict penal laws.*

His works abound with the promulgation of secondary operative measures for keeping the population pure from criminal propensities, the majority of which, to a greater or less degree, have been, and still are, the subject of public discussion. Among the most prominent of them is National education. The system for the management of the poor, having for its end the drying up the sources of poverty, would, by the same operation, dry up the main sources of crime—(*see the next section.*) The arrangements for training pauper children—foundlings and the outcasts of society—would have the effect of subjecting a class, whose world of public opinion is the professional emulation of felons, to the restraints and superintendence of the better portion of society; and of giving to those, whose fate seemed to place them at war with honesty and the laws, an industrial interest in the well-being of their country, and in the administration of its justice. Calamity and disease are looked upon, independently of their own distinctive evils, as generators of crime; and it is in this view that their prevention appeals to the interests and self-preservation of those who are, or may think themselves, ex-

* See Deontology, Principles of Morals and Legislation.

cluded from their influence. The officers nominated in the Constitutional Code, for preserving the public against accidents and calamities, for guarding the public health, and for removing objects which, from their being noxious to the senses, are both dangerous to the health and demoralising in their immediate operation on the habits,—are thus so many active agents clearing the moral atmosphere from the malaria which produces mental disease.*

SECTION VII.

POOR LAWS, EDUCATION, AND OTHER INSTITUTIONS FOR NATIONAL AMELIORATION.

At the time when Bentham devoted his attention to the poor law, (1797-8,)† the then existing system had proceeded for some years in that course of degeneracy from the strict principles of the statute of Elizabeth, which commenced with Gilbert's Act in 1782, and was consummated by East's Act in 1815. Long before he could get others to join in the opinion, he saw that any system founded on the principle of merely relieving suffering, and not containing within itself restrictions calculated to stem the growth of pauperism, would gradually undermine the industrial stamina of the country, by creating more pauperism than it relieved. Subsistence being, as already stated, (see p. 31,) one of the main objects of the law, according to his division, he thought it the duty of the legislature to provide a system which should obviate, as far as human foresight could, the chance of any human being suffering from starvation. In accomplishing this, however, it was necessary to keep in view the counter-error of giving a boon to indolence, by allowing the idle pauper to consume the wealth of the industrious and enterprising producer.

The method by which he proposed to adjust the proper medium, was the same in its leading principles with that which was lately sanctioned by the legislature, as the result of the searching investigation of the Commission of Inquiry,—the rigid application of the Labour test to the able-bodied, and the supervisance of all, by their location in buildings under the inspection of the officials and the public. He was able to foresee the evils of the strictly parochial system,—the comparative costliness, and propensity to jobbing in small local establishments,—the restrictions on the freedom, and consequently on the productiveness of labour by the settlement laws,—the abuses of all sorts that in remote districts might be preying on the vitals of society unobserved,—and the cruel hardships to which those whose position entitled them to relief might be subjected, from their not being on the right spot when misfortune overtakes them; and he contemplated the bold design of a uniform national system under central authority.

He did not propose that the central authority should be in the hands of official persons appointed by the Government. In all national institutions which involve receipt and expenditure of money, varying according to the success of the management, he advocated the contract system in preference to the stipendiary, as more economical and efficacious. His system of prison discipline, under the Panopticon plan, (see above, p. 67,) was to have been conducted under contract management, he himself being the contractor.‡ In the present case, his contractors were to be a joint-stock com-

* These subjects will be more particularly considered in the next section.

† See the Tracts on the Poor Law, Works, vol. viii. p. 358 *et seq.* See also vol. i. p. 311; iii. 72; ix. 13.

‡ The history of his vexations and disappointments in regard to this project, will be found detailed in the Appendix to the Memoirs, (vol. xi. p. 96 *et seq.*,) and in other parts of the Works. The chief objection which official persons appeared to find in the scheme was, that the terms were too favourable to the public to be practicable,—a feature for which either its Author's sanguine temper, or his practical sagacity must stand responsible.

pany, whose directors were to be the central board of management. Their funds were to consist in such poor-rates as it should be found necessary to levy, and the produce of the industry of the able-bodied paupers, with other contingencies. Their profits were to be so far limited, that while they might have sufficient encouragement for economical and energetic management, they should not be put in possession of the power of levying a poor-rate to provide extravagant profits to themselves. The Plan of Pauper Management—it is to be regretted that hitherto only a skeleton of it has seen the light—contains a multitude of minute arrangements for obviating mismanagement, preserving order, regularity, and good habits, educating the paupers, and generally elevating their moral standard,—which cannot be here enumerated.

In 1797, a Bill for making alterations on the poor law was brought in by Pitt. It is difficult to estimate the disastrous consequences which must have followed this measure had it been passed. A critical examination of it was written by Bentham, and sent in MS. to Pitt;* and the fortunate consequence of this lucid demonstration was, the abandonment of the measure. The general aim of this measure was simply an enlargement—and that a sudden one—of the pernicious principles which had been gaining ground for some years—that there was only one thing to be kept in view in a poor law, the satisfaction of all demands made upon the wealth of the community by its poverty, without asking questions; and that whatever deficiency appeared in the operation of the existing system, was to be simply remedied by conveying more of the money of those who had it to those who had it not. One of the provisions of the act was, an allowance, in the case of a large family, to each child unable to support itself; and it was very distinctly shown in the criticism, that the parentage of a large family would thus become a far surer road to wealth than ordinary honest industry. Another of the proposals in this singular measure was, to provide cows to respectable paupers, likely to convert the benefit into a means of eking out a livelihood. On this proposal it is remarked: "The cow *dies* or is *stolen*, or (what is much more likely) is *supposed* to be stolen, being clandestinely *sold* to an obliging purchaser at a distance. What is to be done? '*Want of relief*' warranted the *first* cow; the same cause will necessitate a *second*—limit who can the succeeding *series* of cows: The disappearance of the *first* cow (it may be said) will excite *suspicion*; the disappearance of a second cow will *strengthen suspicion*; true, but upon a mere suspicion without *proof* will a family be left to *starve*? The utmost security then amounts to *this*, that to a certain number of successive pensions thus *bought out* will succeed a pension which will *not* be bought out."†

Bentham contemplated a system of poor laws as a means of removing out of the way the damaged part of the population, and of improving the improveable; and not as a mere provision for existing destitution. In his eyes, therefore, it was a great moral engine which might be applied to various useful purposes. The most important of these was the suppression of vagrancy and mendicancy. His officials, holding out relief with the one hand, were to be entitled to treat all mendicants who refused to accept of it, not as persons who supplicated charity to relieve their wants, but as professors of the criminal trade of begging, and so amenable to punishment. It was part of his plan, that, until some responsible person should be prepared to answer for his following an honest calling, no beggar should be removed from the workhouse. The suppression of mendicancy would, it was believed, have a great influence in reducing the number of graver crimes. A disposal of all the vagrants of a country within workhouses, unless they find security to work elsewhere, would, undoubtedly, if it came into actual and satisfactory practical operation, have that effect which the Author anticipated from it,—

* See Works, vol. viii. p. 440.

† Works, vol. viii. p. 447.

of destroying the nests in which criminals are reared.

The great subject of National Education, for which Brougham has obtained a place in the public mind worthy of its eminence, may appear to some to be treated with indignity, when discussed as subsidiary to a poor law. Bentham, however, was of opinion that the education of the indigent is far more important, in the eye of the public, than that of the rich: more important, because it serves as an instrument of social organization, which the opulent will supply to themselves, on the voluntary principle; while the means of procuring a supply for the poorer classes, becomes a matter of public policy. In this view, as a system which must be provided for by an eleemosynary fund, he considered that National education was connected with the poor law.

The system proposed in the Plan of Pauper Management, unites both training and education. The Author had the sagacity to see, what has been in later times too often exemplified, that the seeds of the higher branches of knowledge cast into minds unprepared for their reception, may produce bad or worthless fruit. His great object was to redeem pauper children from a position in which, as outcasts from society, they were likely to remain during their lives either a burden on the charity of the community or enemies to its property; and to elevate them into the position of productive members. In a community where there are no unproductive members there can be no permanent paupers; and the very best form, in point of economy, which a provision to the poor can assume, is that in which it converts any class of persons from consuming to productive members of society. With this view, the principal end in the education of pauper children, after they have been taught the principles and practice of morality and religion, is to fit them for some trade by which they can make their bread, to train them in those regular habits which a respectable man finds necessary to his happiness, and to accustom them to value those comforts and appliances with which industry and regularity only will supply them. A portion of intellectual instruction should, of course, accompany this training; for, of all inducements which the man who labours with his hands can have to keep him from degrading habits, intellectual resources are the most potent. It is only, however, as accompanying the means of making a livelihood, and in connexion with well-regulated habits, that intellectual instruction can be calculated upon as serviceable to beings in the position of pauper children.*

The remarks which Bentham left behind him, on a proper system of education for the richer classes, are to be found in certain fragmentary essays, brought together under the title of Chrestomathia.† The work consists partly in an exposition of the benefits of intellectual instruction, partly in the description of a project for establishing a national school for the middle classes, and partly in an analytical examination of some of the departments of instruction suited to such an institution. He adopted, in a great measure, the system of division of labour suggested by Lancaster and Bell. There are several principles of tuition laid down, the main feature of which is, the establishing a rigid mental discipline in the minds of youth—preventing their thoughts from straying, and taking measures for ascertaining, with respect to the several steps of the progress, that nothing is left in a crude and undigested state, but that whatever is learnt is *well* learnt. It is generally as a discipline to the mind, that the devotion of so much of the time of youth to the acquisition of classical syntax, prosody, and etymology, is vindicated. There is no doubt that the operation of mastering languages, so philosophical in their structure, and so little capable of being made

* See Works, vol. viii. p. 395 *et seq.* The Report on the training of pauper children, presented by the Poor Law Commissioners in 1841, is a practical adaptation and illustration of Bentham's opinion. It is to be regretted that the commissioners have not been enabled to carry out their practical application of the system to the extent which appears to have been contemplated by them.

† See the commencement of vol. viii.

use of, without a scientific acquaintance with them, as the Greek and Latin tongues, is in itself a powerful mental tonic. But if the same discipline can be accomplished by instruction in subjects more likely to be afterwards made practically available by the pupil, there would be undoubted economy in the change. Neither his own personal inclinations, nor his judgment, would have prompted Bentham to deny their due weight to classical studies. "He was a scholar, and a ripe and good one," in the ordinary sense of the term. He was partial to the Greek language, which he maintained to be, in its structure, the best suited for a scientific nomenclature. His partiality towards it has betrayed itself in many of the titles of his works — witness the Chrestomathia itself, (χρηστομαθεια the study of useful things,) Nomography, Deontology, Pannomial Fragments, &c. To his case, therefore, the common remark, that none attack the so generally conceded supremacy of ancient learning, but those who have not had the good fortune to receive a classical education, does not apply.

To those who take much interest in the teaching of the higher branches of knowledge, the Chrestomathia, though only a collection of fragments, must convey many useful hints, from the clear manner in which every branch of instruction is separated from all others, and each is presented in its turn as a topic to be separately exhausted.

The subject of the education of the higher classes of society, has, from a natural analogy, been here treated in juxtaposition with the means of training and instructing the children of the poor. The main object of the present section, however, is to glance at the subsidiary legislative measures for internal organization and improvement contemplated by Bentham; and to these it is now necessary to return.

The concluding chapters of the Constitutional Code, contain a multitude of minor arrangements for purposes of public utility, of which the general Registration system is, perhaps, the most conspicuous. Legislation has made a great stride in relation to this subject since Bentham wrote. He had to suggest the system of a uniform Register of births, marriages, and deaths, so arranged, that the making entry in the register should not depend on the choice of individuals, but should be imperatively enforced. He viewed such a general register as a grand store-house of facts, applicable not only as evidence for legal purposes in relation to the persons appearing on the register, but as providing a fund of vital statistics, upon which political economists might reason, and the legislature act. To make the vital statistics serviceable, in relation to the influence of trades, habits of life, places of residence, &c., on health, he suggested that the professions of the parties should be entered, and, in the entry of each death, the disease or other occasion of it. Those who are acquainted with the general Registration act for England, (6 & 7 Will. IV. c. 86,) will recognise it as founded on the principles laid down by Bentham, as they appear in the Constitutional Code.* The part of the code in which they appear, was not published until after that act had passed, but they had been for ten years promulgated in the Rationale of Evidence.† At the time when the Bill for England was under discussion, a similar measure was brought in for Scotland; but it was opposed by the clergy, was dropped, and has not been revived.

The Registration system in the Constitutional Code embraces other elements, which have not been yet experimented on—a Record of arrivals at the age of majority, and of lapses from, and restorations to sanity.‡ The proposal of a General Register, applicable to Real property, and to contracts and other transactions, did not originate with Bentham. The system has been illustrated in Scotland and in France, and partially even in England; and efforts have been made by practical statesmen, of whom Oliver Cromwell was, perhaps, the first, and Lord Campbell has been the last, to put the system in practice

* Works, vol. ix. p. 625 *et seq.*
† Ibid. vol. vi. p. 566 *et seq.*
‡ Ibid. vol. ix. p. 630-632.

on a wider basis. The importance of such a system, and the best arrangements for its operation, are fully examined in more than one of Bentham's works.*

In the Constitutional Code, provision is made for a public officer, whose duty it is to perform those remedial functions for the public, of which the want is so often felt in a thickly-peopled country, and which magistrates and police authorities cannot easily fulfil. Among the multifarious duties assigned to him, is the settlement of momentary disputes with coachmen, innkeepers, porters, &c. The traveller is much at the mercy of these classes, who, in respect to judicial control, readily distinguish, for their victims, those who will not have time or opportunity to follow up an inquiry. The principle of interference in such cases is no infringement on freedom of trade and labour. The object of all just regulation on the subject, is, not to compel the hirer to employ for, or the hired to work for an arbitrary price, but to settle, by regulation, terms which parties are presumed to accept of when they make no specific stipulation. The Local headman has many other, perhaps more important spheres of action. He is to give information to parties wishing to be acquainted with the wages of labour and the means of living, &c. in his district, to give friendly advice in disputes, explaining the probable results of an appeal to the Law, &c.†

The Health-minister has important functions assigned to him in the Constitutional Code. In conjunction with the Indigence-relief minister, he has control over the medical officers of all eleemosynary institutions. He exercises the appropriate functions in hospitals for the sick, lunatic asylums, and prisons. The object in view, in the appointment of such an officer, is to have, in the shape of instruction, direction, and control, the application to the operations of inferior officers, of that skill which can be purchased by high pay and official distinction. This officer is to have other powers for protecting the public health. He has to see that there is a proper supply of water for the public use; to take cognizance of all means by which the public health may be injured, by overcrowded buildings, undrained lands, places of interment, and noxious manufactures; he is to exercise, indeed, in general, the functions of a central officer for the enforcement of sanatory regulations.‡

In the tracts on the Poor Law there are various minor suggestions for increasing the comforts, and raising the tone of character, of the working classes. The extent to which those who are better informed, and have larger influence in society, may aid them in counteracting their besetting sin, improvidence, is strongly urged. In the Pauper Management, a plan is suggested for the establishment of Frugality Banks,§ the main features of which have been adopted in the legislative establishment of Savings Banks.|| At the time when he wrote, Friendly Societies had received but slight aid from the legisla-

* See Works, vol. v. p. 417; ix. 634; x. 350.

† Ibid. vol. ix. p. 612 *et seq.*

‡ Ibid. vol. ix. p. 443 *et seq.* It would be an injustice to that friend of Bentham who has so thoroughly laid before the public the grounds on which Sanatory Legislation ought to be based, to allow it to be presumed that the Constitutional Code contains on this subject anything beyond simple suggestions as to the general subjects to which the regulations should apply. The suggestions might have remained unnoticed like many of their author's other valuable hints. The public owe the full inductive sifting which this subject has received solely to Mr Chadwick, some of whose remarks on sanatory regulations, written long before he could have anticipated an opportunity of bringing forward his views in an authoritative form, were quoted by Bentham as illustrative matter for the Constitutional Code. See Works, vol. ix. p. 648.

§ See Works, vol. viii. p. 407 *et seq.*

|| It is a singular illustration of the smallness of the extent to which the very valuable tracts on Pauper Management have been perused,—probably from their having been published only in a periodical work, (viz., "The Annals of Agriculture,") that the first suggestion of Savings Banks is almost universally attributed to the Proposals circulated by Mr Smith of Wendover, two years after the publication of the Pauper Management. In that work, instead of the few crude suggestions with which such projects generally commence, the whole system, with its deferred annuities, and other characteristics, will be found to be distinctly explained.

ture, and were subject to all the risks, inconveniences, and miscalculations, which the operations of small bodies of uninstructed men would naturally entail on them. Their vital calculations, founded on imperfect data, were generally erroneous; and it frequently occurred, that a society which, at first, appeared to be prosperous, became exhausted before it met the claims of those who, having longest contributed to its funds, had the best equitable claim to its benefits. The meetings could be held nowhere but in public-houses; and thus the practice of frugality was attempted to be commenced in the midst of those inducements to excess which are its greatest enemies.* These evils received no correction till they were prominently exposed by the select committee appointed in 1825.

The facilitation of the transfer of small sums of money from place to place, is urged, in the Pauper Management, as an important adjunct to frugality and commercial integrity.† The plan has been practically adopted in the system of Post-office money-orders.

Though he could not be said to have made any approach to the valuable discovery of Mr Hill, Bentham so far anticipated the modern opinion of the functions of a Post-office, that he viewed it, when established on proper principles, as an institution fraught with internal improvement—with the progress of knowledge, the nourishment of the social virtues, and the facilitation of trade. He thought it ought to meet with encouragement from the legislature, and that it ought not to be a source of revenue.‡

On the enlightening and civilizing influence of the press, he wrote at more length.§ He considered the editor of a newspaper as the admitted president of a department of the public-opinion tribunal, viz.—that portion of the public who support, or are directed by, the opinions of the newspaper. He was a friend of the perfect freedom of the press—that is to say, of the principle, that those who write in it should be permitted to do precisely what they please, subject to punishment for every offence against person, reputation, or property, which they may commit through a newspaper, just as if they had committed the same offence through any other means. The English law of Libel he considered despotic and capricious. Its principle is, that every man who finds anything in print which offends him, and who has money enough to raise an action, may inflict a heavy punishment on the writer. He sarcastically characterized the formality of a trial as a mockery, when founded on such doctrines; as, the very fact of a man being at the expense of prosecuting is of itself the best evidence of his feelings being hurt.‖ All taxes on knowledge, he considered injuries to the welfare of a state, as an impediment thrown—generally designedly—in the way of national improvement.¶

SECTION VIII.

INTERNATIONAL LAW.

All that Bentham wrote on this subject, is comprised within a comparatively small compass;** but it would be unpardonable to omit all mention of a science which he was the means of revolutionizing, and which, previously to his taking it in hand, had not even received a proper distinctive name. No work, bearing separately on this subject, written by Bentham, was published during his lifetime, and his "Principles of International Law" made their first appearance in the collected edition. From observations here and there scat-

* See Works, vol. viii. p. 410 *et seq.*

† Ibid. vol. viii. p. 417.

‡ Ibid. vol. viii. p. 583.

§ Ibid. vol. ii. p. 275 *et seq.*; v. 97 *et seq.*; viii. 580 *et seq.*; ix. 53 *et seq.*

‖ Works, vol. i. p. 574 *et seq.*; v. 97 *et seq.*

¶ Ibid. vol. ix. p. 451.

** Ibid. vol. ii. p. 535-560. See the subject casually introduced vol. iii. pp. 200, 611; ix. 58, 382.

tered through his works, his opinions on the subject might be gathered; but it was almost solely in the great article by Mr Mill on the "Law of Nations" in the Encyclopædia Britannica, that the public could find a distinct account of the utilitarian theory of International law.

It was necessary to establish a distinction between International laws, and laws calculated for internal government, which had not been distinctly drawn in the previous works on the subject. The internal laws of a country have always a superordinate authority to enforce them when any dispute regarding them takes place among the inhabitants; but when nations fall into disputes there is no such superordinate impartial authority to bind them to conformity with any fixed rules —whether the community of civilized nations may hereafter be able to establish such a tribunal is a separate question. It hence arises that, in the internal laws of a state, there is always an approach more or less near to a uniformity of decision in disputed cases, and that the decisions may be referred to as precedents for future action. In disputes between nations, however, the decisions, if they may be called so, are more properly the victories of the stronger party, and are precedents to be followed by those who are able to imitate them, and to be submitted to by those who must submit. Hence, a reference to precedent, as the foundation of International law, must be fallacious, and no principles founded on it can be just.

What had been done, being quite useless as a guide in this department, it was maintained that the way to serve mankind in any view that could be taken of the subject was, by showing what ought to be done. The question intervenes—what is the use of showing what ought to be done, when it is admitted that there is no authority capable of doing it, and that we must leave it in the hands which we charge with having already abused it—those of the stronger party in each dispute? The answer is, that though there be no distinct official authority capable of enforcing right principles of International law, there is a power bearing with more or less influence on the conduct of all nations, as of all individuals, however transcendently potent they may be— this is the power of public opinion; and it is to the end of directing this power rightly, that rules of International law should be framed.

The power in question has, it is true, various degrees of influence. The strong are better able to put it at defiance than the weak. Countries which, being the most populous, are likely also to be the strongest, carry a certain support of public opinion with all their acts, whatever they may be. But still it is the only power that can be moved to good purposes in this case; and, however high some may appear to be above it, there are, in reality, none who are not more or less subject to its influence. The conquerors who have nearly annihilated their enemies, are far from being exempt from the judgment of the public-opinion tribunal, regarding the extent to which, while victorious, they have exercised the virtues of generosity and humanity.

Bentham was opposed to war, as he was to every practice that brought with it destruction and misery; but he held that there were circumstances which might justify it as a choice of evils. He thought there were occasions on which a display of energy was essential to peace and security; and that those theorists who eschewed war as "unlawful," were frequently only saved from a series of oppressions which would form a dangerous precedent against all peaceably-inclined communities, by the exertions of the bolder spirits with whom they were mingled.* The wars commonly called "glorious"—the wholesale murder of human beings, on no better impulse than the lust of power and the gratification of vanity, he denounced with all the indignation of his ardent nature. His views of the right principles on which

*"In *defensive* force the principle is, no doubt, involved, that attack may be remotely necessary to *defence*. *Defence* is a fair ground for war. The Quaker's objection cannot stand. What a fine thing it would have been for Buonaparte to have had to do with Quaker nations!"—Vol. x. p. 581.

the sword should be drawn, involved a self-sacrifice, founded on a conscientious and serious calculation of results. His just national wars were a deliberate and well-weighed resignation of present luxuries and advantages, to obtain some end good for the community, and good for mankind; to obtain relief from the demoralising and degrading influence of servitude; or to help a weak nation struggling with a powerful.

Thus, judging that there were circumstances which would justify declarations of war, he appealed to the tribunal of public opinion regarding the method of conducting hostilities towards the desired end, with the smallest infringement of the Greatest-happiness principle. On this principle, no evil act should be done to an enemy, unless it will produce a proportional amount of benefit to the side effecting it. The vicissitudes of war afford many opportunities for a choice of operations, in which a benevolent mind will be able to accomplish as much for his own country as a malevolent, without the same sacrifice of life and property. It will be a ruling principle to strike at the government instead of the people. The disablement of the former is sure to produce the end aimed at, and may occasion a comparatively small amount of misery. When a government is weakened through attacks on the people, the operation is performed in the most cruel manner in which it can be accomplished. There can seldom be much good done by destroying the food and clothing of the people, or by appropriating such necessaries, unless they are wanted for the invading army: and the effect to be produced on a contest by such heartless acts, can seldom enter into comparison with the efficacy of a seizure of warlike stores. The one must always be productive of cruelty; the other may, in the end, serve the purposes of humanity, by terminating the contest. Here, as in private ethics, self-regarding prudence goes hand in hand with effective benevolence. There are none against whom the flame of human passion burns more fiercely and enduringly than those who, forgetting the humanity of the man, and the heroism of the soldier, have marked their progress through a hostile territory, by smoking hamlets, devastated fields, and homeless orphans.

As there are mischiefs to be abstained from in war, there are services for nations to perform to each other in time of peace. They should afford all facilities for commercial intercourse between their own and other nations, and between those foreign states which may have occasion to use their territory as a highway. The civilized part of the world is coming, day by day, nearer to just principles of international intercourse. France affording a highway for our communication with our great oriental empire, and conveying through its government telegraph the earliest news of our operations in the east, is a symptom of progress which it would have afforded Bentham the liveliest gratification to witness. Nations should afford each other every reasonable assistance in the enforcement of the law of private rights belonging to each. A community of nations bound to give assistance to each other's *political* laws, would be a most dangerous alliance; it would be too apt to become a combination of monarchs for the support of despotism. In agreeing, however, to make parties who seek refuge within its territory amenable to the private laws of the country they have fled from, whether they have attempted to escape from a civil obligation, or from the punishment of a crime, each nation confers a benefit on every other, and, by the reciprocity, a benefit on itself. When nations are better accustomed to the performance of these services to each other, and when free trade has brought them within the circumference of common interests, they will daily find more inducements to preserve the blessings of peace, and fewer causes of irritation urging them to war.

SECTION IX.

POLITICAL ECONOMY.

LIKE all the later writers on the subject of Political Economy, Bentham acknowledged Adam Smith as his master; and he professed only to analyze some of those departments which the founder of the science had not examined, or in relation to which he had adopted views inconsistent with the great principles of his own system.

The chief service which Bentham has done to this science, has been in the application of his exhaustive system to the carrying out, to their full extent, the doctrines of FREE TRADE. As in every other subject, he applied to this the criterion of the Greatest-happiness principle, and its bearing on legislation. Political Economy, if it were to be looked upon as an art, he conceived to be the art of supplying mankind at large with the greatest possible quantity of the produce of industry, and of distributing it in the manner most conducive to the wellbeing of humanity. When he asked what legislation ought to do towards the accomplishment of these ends, the answer was—Let it leave each man to do what seems best to himself. The wealth of individuals is the wealth of the community; and each man is the best architect of his own fortunes. The preservation of security is all that Political Economy looks to from the legislature—security for wealth created—security for the exercise of ingenuity and industry in creating more—security for enforcing the performance of contracts.*

This, its essential and simple duty, the legislature was found to be neglecting, while it was occupied in making abortive attempts to perform the unperformable task of increasing productiveness or decreasing consumption. It denied to the creditor, what it might so easily have given him—facilities for immediate access to the funds of the dishonest or obstinate debtor. The debtor might be deprived of his liberty on the oath of any ruffian, and his creditor might make him a slave for life; but there was no middle course where justice could meet humanity—where the unfortunate might be spared the punishment due only to a felon, and the fraudulent might be deprived of the means of defying the law. This state of matters has been much improved in the course of modern Legislation. It cannot be denied that these improvements are in a great measure owing to the writings of Bentham, † and they are respectively additions to that security which, in his opinion, was all that Political Economy demanded of the Law.

Though it cannot, however, frame laws for directly increasing or preserving the wealth of the community, legislation may do much to enable the individual members to do these things rightly for themselves. Its chief means of accomplishing this is Education. On the effect of intelligence in increasing individual, and thence national production, it is quite unnecessary to enlarge. It gives the engineer the means of inventing, and properly applying machinery. It gives the merchant the means of knowing the most profitable markets. It gives the labourer the means of knowing where his labour is most valued, and enables him, when he finds the trade he is occupied in, falling, or becoming overstocked, to turn his hand to another. In short, in all circumstances, skill, the fruit of education, gives the producer the means of increasing the value of his produce to his own benefit, and to that of the community. (See above, p. 71.)

Rewards, for exhibitions of skill or genius in arts and manufactures, are aids to the operation of education: they serve to create emulation, and to open

* See Works, vol. ii. p. 1-103. See also vol. i. p. 302; ii. 269; ix. 11.

† See Works, vol. i. p. 546; iii. 428; v. 533; vi. 135, 176, 180; vii. 381.

and improve the faculties. On the most judicious means of adapting these rewards to their ends, he wrote a considerable quantity of remarks and elucidations. He thought the most ingeniously devised source of reward, was that of giving a monopoly, in the use of an invention, to the inventor, for some limited time—the Patent system. The great value of this arrangement he found to be in its power of adjusting the amount of the reward to the extent to which society found itself benefited. He did not adopt the view, that the produce of intellectual labour, or of skill, should be declared by the law to be like the physical subjects of appropriation, something which must be for ever the property of him who brought it into existence, or of those deriving right from him. If such a principle had been opened up at the time when he wrote, he would probably have found, on a comparison of the end proposed to be accomplished, with the means of performing it, that human legislation could not accomplish so difficult a task as that of keeping all subjects of invention, and all productions of intellect, the perpetual property of some person or other, as it does in the case of physical objects—even had such a result been desirable. Accordingly, the foundation on which the Patent and Copyright laws are placed, is that of Privilege, granted as a reward for services. The impediments thrown in the way of the acquisition of the reward, by the costly and cumbrous machinery of the Patent laws, is much deplored. Bentham's suggestions as to a simpler system of Patent laws, have been taken advantage of in a series of statutes, which have been remodelled and consolidated by the 5 & 6 Vic. c. 100. This act adopts a practical facility for its operation, which was likewise suggested by Bentham—viz. a register of the inventions or patterns as to which the privilege is held, with a series of marks for separating and individualizing them.*

Bentham found one important element, in relation to which Adam Smith had lost hold of the pure principles of free trade. The father of political economy had not succeeded in so completely clearing the nature of money of its adventitious and popular acceptations, as to be able to treat it like an ordinary commodity, subject to the common rules of trade. Hence he supported the Usury laws, which are essentially a restriction of free trade in money. As an exposition of this fallacy, Bentham wrote his "Defence of Usury." † It has often been remarked that this title is not a descriptive one—the work is no more a defence of usury than it is a defence of high prices. It merely proves the folly and mischievousness of any attempt to fix the price that should be paid for the use of money. It will be unnecessary to make any analysis of arguments which have now been seconded by the almost entire abolition of the Usury laws.

Bentham's other works on Political Economy are chiefly occupied in the exposure of the fallacy of those artificial efforts which legislation makes to increase the country's wealth. One of the most prominent and extravagant of these he found to be colonies.‡ The expense which they occasion, not only in the way of continuous support, but as the cause of wars, is enormous. They give nothing to the mother country; for they will never consent to be taxed. A trade with them is not more advantageous than a trade with any other people;—they will not give more than the market price for our goods, or sell their own to us at less. They can make no addition to our trade; for it is limited by our capital—by that amount of the proceeds of industry which we have saved up from consumption. If we can double our capital, we may double our trade; but we can never increase it by wasting our capital in compelling people to buy from us. We may give our colonies the monopoly of a certain trade with the mother country—this is just going to a narrow,

* See Works, vol. ii. p. 212; iii. 71; v. 373; vi. 584.

† Commencement of vol. iii. of the Works.

‡ See Works, vol. ii. p. 547 *et seq.*; iii. 52 *et seq.*; iv. 408 *et seq.*

and consequently disadvantageous market, instead of a wide, and consequently good one. We may compel them to consume our manufactures—we must first contrive to give them the money to buy them with; and thus we hire purchasers, to keep up a trade which cannot support itself.

Colonization is, however, not without its advantages, though few of these fall to the share of the mother country. It may be the means of removing the damaged part of a population, through a system of emigration. It is only, however, in peculiar circumstances that it will not be a very extravagant means of accomplishing this end. If there is another country which will absorb our damaged* population, the support of colonies for the purpose, is just paying for what may be got for nothing. Colonization may be the means of spreading the blessings of civilisation among savage tribes: here there is a palpable advantage to those tribes themselves, and to the world at large; but it is obtained at a sacrifice on the part of the mother country. It will sometimes occur, that the possession of fortified places abroad is serviceable for the protection of the free commerce of a nation; but this is a benefit of rare occurrence, and is very often supposed to be obtained when it is not.

The science of Political Economy has made so much progress, especially in the department of free trade, since the date of Bentham's writings on the subject, that it will hardly be of service to analyze his arguments against Monopolies, Prohibitions, Restrictions, and Bounties.† Perhaps no other writer on Political Economy has given so clear an account of the incidence of bounties on exportation. He describes them as tribute paid to the foreign consumer. If we can produce the article cheaper than other nations can, the foreigner buys from us of course. If we reduce it below its proper remunerating price, he is not the less ready to buy from us—but the only way in which we can so reduce it, is by paying part of the price for him.

In the case of *bounties upon exportation,* the error is not so palpable as in that of *bounties upon production,* but the evil is greater. In both cases, the money is equally lost: the difference is in the persons who receive it. What you pay for production, is received by your countrymen—what you pay for exportation, you bestow upon strangers. It is an ingenious scheme for inducing a foreign na-

* The term "surplus population" is generally employed in relation to emigration; but this implies an application of the system too wide to be practicable. Population never can be too great when there is employment for all; and no nation could afford to carry off the numbers annually added to a population which, by such removals, has free room to grow. All who can be removed by any practicable system are immediately replaced; and, before any advantage can be had by the removal, it must be shown that, by some improvement in the institutions and habits of the country, the unproductive individuals removed are to be replaced by productive. The committee of the House of Commons, of 1841, on emigration from the Highlands, with great caution, recommended that no money for the purpose should be advanced by Government until there was some security, in an amendment of the Scottish Poor Law, that a similar unproductive population should not succeed to those so removed.

† Probably the only subject in relation to which Bentham is behind the knowledge of the present age, (his works on Political Economy were almost all written in the 18th century,) is in his views of the incidence of machinery on the wages of labour. Taking the direct advantages of machinery on the one side—cheapness of production, and the command of foreign markets arising out of that cheapness—he deducted from these the loss to labour, (vol. iii. pp. 39, 67-68.) He had forgotten to keep in view, that of the capital exhausted on hand-made, and that on machine-made produce, it is not a necessary fact that a less proportion of the latter should go in the form of wages of labour than of the former. In the case, for instance, of a certain capital spent on the production of stockings, if they are hand-knit, the wages go to the knitter; while, if they be machine-made, the wages go to the miner, the smelter, the machine-maker, &c. The elements of the prices of commodities are, rent of land, on which the raw material is produced—wages of labour—and profits of stock. These elements will vary in their proportions, according to incidental circumstances; but it does not follow that they will be necessarily different in the case of hand-produce, from what they are in the case of machine-produce. Another discovery of modern science in this department, which seems not to have been anticipated by Bentham, is, the fallacy as to the influence of the Sinking Fund, so clearly exposed by Dr Robert Hamilton in his work on the National Debt.

tion to receive tribute from you without being aware of it; a little like that of the Irishman who passed his light guinea, by cleverly slipping it between two halfpence. . . .

The Irishman who passed his light guinea was very cunning; but there have been French and English more cunning than he, who have taken care not to be imposed upon by his trick. When a cunning individual perceives you have gained some point with him, his imagination mechanically begins to endeavour to get the advantage of you, without examining whether he would not do better were he to leave you alone. Do you appear to believe that the matter in question is advantageous to you? He is convinced by this circumstance that it is proportionally disadvantageous to him, and that the safest line of conduct for him to adopt, is to be guided by your judgment. Well acquainted with this disposition of the human mind, an Englishman laid a wager, and placed himself upon the Pont-neuf, the most public thoroughfare in Paris, offering to the passengers a crown of six francs for a piece of twelve sous. During half a day he only sold two or three.

Since individuals in general are such dupes to their self-mistrust, is it strange that governments, having to manage interests which they so little understand, and of which they are so jealous, should have fallen into the same errors? A government, believing itself clever, has given a bounty upon the exportation of an article, in order to force the sale of it among a foreign nation: what does this other nation in consequence? Alarmed at the sight of this danger, it takes all possible methods for its prevention. When it has ventured to prohibit the article, everything is done. It has refused the six-franc pieces for twelve sous. When it has not dared to prohibit it, it has balanced this bounty by a counter-bounty upon some article that it exports. Not daring to refuse the crown of six francs for twelve sous, it has cleverly slipped some little diamond between the two pieces of money—and thus the cheat is cheated.—Vol. iii. p. 62-63.

The reader who takes an interest in financial projects will find much to engage his attention in the plan for converting stock into Annuity notes.* The project is an improvement on the Exchequer Bill system. It invites Government to come into the field in opposition to the private banks, with the advantage in its favour of allowing interest on its paper securities. The notes are to be of various amounts. They are to carry interest daily from the day of issue, and are each to have a table by which its value in interest added to capital may be ascertained on any given day. The Author was of opinion that these notes would be used as cash, as of their value on each day according to the table.

SECTION X.

LOGIC AND METAPHYSICS.†

Bentham did not draw a line of distinction between these sciences; and he seems to have considered the terms almost convertible. It follows that he did not treat the subject of Logic, as it has generally been done, particularly by late writers, as a formal science,‡ teaching the laws of thought, as distinct from those sciences which treat of the matter of thought. How far he would have continued his mixture of the two subjects, after he had made some approach to completeness in his examination of the various departments of mental philosophy, it is difficult to say. He seems to have projected, as already stated, (see p. 10,) a full and searching inquiry into all the qualities and operations of the human mind, including an investigation not only of the laws of thought, but of the materials on which they work. To this end, he more than once set himself down to examine and classify the powers of the mind. He exhibited an intention of pursuing the examination of mental operations with a comprehensive, and, at the same time, most minute anatomy. To this purpose, he divided and subdivided the materials of thought; and being brought by his subdivisions into an analysis of the matter of language and grammar, left, in his fragments on these two sub-

* Works, vol. iii. p. 105 *et seq.*

† The Works referred to in this Section are those in vol. viii. down to p. 357. See also vol. iii. p. 285 *et seq.*

‡ The single word science is here used, for the sake of brevity, though Bentham, like Whately, considered that Logic was both a Science and an Art.

jects, specimens of the minuteness with which he intended to go over the whole field.

His notion of Logic was, that it was the means of getting at the truth, in relation to all departments of human knowledge;* and that it thus was, to use his own expression, the schoolmistress of all the other arts and sciences.† It would seem, then, to be included in his view of the subject, that any system of Logic, which left the student ignorant of the means of ascertaining the truth in regard to any one element of human knowledge, was an imperfect system. If Logic be considered as divided into the Analytic and Dialectic branches, the latter half of the subject was entirely rejected by Bentham; for, viewing dialectics in its original signification of the art of debating, he considered it as an instrument of deception rather than of truth—as a system of rules for enabling the more adroit disputant to defeat the less able. If, however, Logic be divided into the Analytic branch and the Synthetic,‡ he has left behind him traces of his labours in both departments: in the former examining the phenomena which the mind exhibits in the process of acquiring truth; in the latter, constructing instruments to facilitate its discovery.

Perhaps the most remarkable and original feature of the analytic portion of the fragments, is the division of all nouns substantive into names of Real, and names of Fictitious entities; a distinction which he follows out with his usual clearness and consistency, and of which he never, in any of his works, loses sight. If this classification in some measure resemble Aristotle's division into Primary and Secondary substances, it will be found, on examination, to have a much more comprehensive influence, and, from the manner in which its author employs it, to have a much more important application to the arrangement of the elements of thought. Nouns expressing real entities are names of things of which we predicate the actual existence—such as a ball, a wheel, an impression on the mind, &c. Nouns expressive of fictitious entities, are, all those nouns which do not express such actual existences. The distinction seems to be a pretty obvious one; but the uses which its Author makes of it are novel and important. In our phraseology as to fictitious entities, we borrow the forms of words which have been invented for explaining the phenomena of real entities; and we cannot speak of the former without the actual use, or think of them without the mental use, of these forms of words. Thus *motion* is a fictitious entity. We talk of motion being *in* a thing, or of a thing being *in* motion; and in using the preposition *in*, we borrow a word which was invented to be used upon physical matter. *Relation* is a fictitious entity—one thing is said to *have* a relation to another, and in this word *have* we are obliged to borrow a word constructed for the purpose of intimating corporal possession. The method in which I *have* my pen, and the method in which logic may *have* a relation to metaphysics, are two very different ideas; but we cannot express the latter without borrowing the use of those words which were constructed to represent the former. Hence, fictitious entities cannot appear in language, our instrument of thought, except through the use of borrowed words. They have no phraseology of their own, and can have none. Whether they have separate existence or not is a question we have not data for determining: to our minds they are so unreal, that we cannot think of them without clothing them for the time-being

* Works, vol. viii. pp. 220, 222.

† Ibid. p. 76.

‡ Bentham would not himself have admitted the use of the terms Analysis and Synthesis with this popular acceptation. In a very curious note, (vol. viii. p. 75,) he has shown that the same elements separated in analysis are never the same that are put together in synthesis. The pieces, if they may be so called, with which the process of synthesis is performed, are not the same which result from the process of analysis. "The subject analysed is an aggregate or *genus*, which is divided into *species*, those into *sub-species*, and so on. The only case in which *synthesis* is exactly opposite and correspondent to, and no more than co-extensive with analysis, is, when between the ideas put together there is that sort of conformity from which the act of putting them together receives the name of *generalization*."

in the words which are invented for thinking of real entities.* How far a pursuit of this subject would throw light on the old dispute of the Realists and Materialists—how far misapprehension as to the actual subject of discussion may have arisen from this necessity of borrowing the phraseology of real entities for the purpose of discussing fictitious entities, is an inquiry on which the present writer cannot venture.

The next feature prominently demanding attention in the logical tracts, is the instrument which their Author used for analyzing and laying out his subjects—his exhaustive method of division, on the Dichotomous or Bifurcate plan. He took the hint of this system from the old editions of the Isagoge of Porphyry, in which there is a diagram exhibiting an exemplification of it, commonly attributed to the inventive genius of Porphyry himself, but probably the work of an editor. The dichotomous mode of division is frequently alluded to in the writings of the Aristotelian logicians, and it received considerable attention from Ramus; but it was, like many other instruments of discovery, a mere plaything for the intellect, until it fell into the hands of a man who was able to adapt it to practical service. The Porphyrian tree represents as the centre or trunk a *genus generalissimum*, from which successive branches issuing carry off some separable quality, until it has gone through as many processes of division as can be applied to it, and leaves in the two last condividends the two most concrete entities which can be comprehended within the general term.

The service which Bentham derived from the study of this diagram, was in its leading him to the conclusion that the only species of division which in its very terms bears to be exhaustive, is a division into two. It may happen that any other division—such as that of the works of nature into the animal, vegetable, and mineral kingdoms, may turn out to be exhaustive: but the object is to find a formula the use of which of itself secures exhaustiveness.

* See Works, vol. viii. pp. 119, 126, 195 *et seq.*, 263.

It is only by a division into two parts that logical definition *per genus et differentiam* can be accomplished. The species is marked off by its possessing the quality of the genus, and some differential quality which separates it from the other species of that genus. It is only by the expression of a difference as between two, that thought and language enable us to say whether the elements of the thing divided are exhausted in the condividends. We can only compare two things together—we cannot compare three or more at one time. In common language we do speak of comparing together more things than two; but the operation by which we accomplish this end is compound, consisting of deductions drawn from a series of comparisons, each relating to only two things at a time. Comparison is the estimate of differences; and language, by giving us the word "between," as that by which we take the estimate, shows that we can only operate on two things at a time. Thus, if we have a division of an aggregate into three, we cannot give such a nomenclature to these three elements as will show that they exhaust the aggregate. If we say law is divided into penal and non-penal, we feel certain, in the very form of the statement, that we include every sort of law under one or other of these designations; but if we say that law is divided into real, personal, and penal, we cannot be, in the same manner, sure that we include every kind of law. If we wish to proceed farther in the division, and, after dividing the law into penal and non-penal, say the non-penal is divided into that which affects persons and that which does not affect persons, we are sure still to be exhaustive; and this system we can continue with the same certainty *ad infinitum*.

The system is undoubtedly a laborious and a tedious one, when the subject is large, and the examination minute. The exemplifications which the Author has given in his tables are the produce of great labour, and cover but a limited extent of subject. It was more as a test of the accuracy of the analysis made by the *mind* when proceeding with its ordi-

nary abbreviated operations, than as an instrument to be actually used on all occasions, that the Author adopted the bifurcate system. As a means of using it with the more clearness and certainty, he recommended the adaptation to it of the Contradictory formula—viz., the use of a positive affirmation of a quality in one of the condividends, and the employment of the correspondent negative in the other. The value of this test, as applicable to any description of argumentative statement, is, in its bringing out intended contrasts with clearness and certainty. It is not necessary that the Differential formula should be actually employed. In its constant use there would be an end to all freedom and variety in style. But it is highly useful, to take the statement to pieces, and try whether its various propositions contain within them the essence of the bifurcate system and the formula; in other words, to see that when differences are explained, or contrasts made, they be clearly applied to only two things at a time, and that the phraseology, instead of implying vague elements of difference, explains distinctly what the one thing has, and what the other has not.*

* For an account of the Bifurcate system, see Works, vol. viii. pp. 95, 103, 107, 110, 114, 253.

THE END.

EDINBURGH:
Printed by William Tait, Prince's Street.